

128



FR000156

733/1890

48 sheets



In the High Court of Judicature at Port William in Bengal

(Civil Appellate Side.)

110-1-16  
H.C. file-1-43  
p. 3

# TITLE PAGE.

## PART I.

(This file must be preserved for ever.)

APPEAL FROM Appellate No. 733 OF 19 1890  
a case

Eaya Bairkanto N. the Day of others Appel.

DEPT.

The Secretary of State India Respondent.  
in Council

DATE OF DECISION OF HIGH COURT 23rd April 1891

DITTO OF PRIVY COUNCIL

733/1890-01



# In the High Court of Judicature at Patna.

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S. Appeal No. 733 of 1890.

Raja Bairamto Nath Dey *versus*

Appellant

The Secy. of State for India in Council Respondent

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733/1890-02

*Anita*  
Signature of Officer of Court.

Compared and found correct.

Date 9/3/23.



Present:

31

The Honble Mr Justice Tottenham

These four appeals

and

The Honble Mr Justice Trevelyan arise out of four suits

brought against the

Appeals from Appellate

Decrees nos: 733 and ~ appellants before us up  
735 to 737 of 1890.

a bond which is printed

For affitts: Mr. Jackson &

Babus Baikant at page 20 of the paper

natti Pal and ~

Tarak natti Palib.

For Respdt - Babus Hem

Chunder Banerjee

and Ram Churn ~

Mitter ~

book. The real question

is as to the construction

of this bond

The 23<sup>d</sup> April 1891 ~

The defendants, ~

appellants, had a license

to store salt,

and they executed a bond

in favour of the Secretary



of State for India, and  
by this bond they  
covenanted "that we will  
discharge without objection,  
within 15 days of the  
issue of the Commissioner's  
orders, any duty that  
may be adjudged against  
us by the Commissioner  
of Orissa on account  
of any excess or penalty  
duty in consequence  
of any deficiency (beyond  
the



2/  
the usual allowance  
of  $2\frac{1}{2}$  per cent as wastage  
of salt found in the  
said warehouse at the  
time of Clearance ~

The suit was ~  
brought to recover the  
amount alleged to have  
been adjudged by the  
Commissioner against  
the appellants; and the  
real question before us  
is whether there is any

evidence



evidence that the  
Commissioner had adjudged  
any amount as payable  
by the appellants; and  
this question when one  
comes to examine it,  
is in reality one as  
to the meaning of  
the word "adjudged".

It has been  
suggested that no amount  
has been adjudged.

All that was done  
was



3  
was that on the 18<sup>th</sup>.  
March 1884 the Collector  
of Balasore wrote to the  
Commissioner of Orissa  
stating what had taken  
place, and recommending  
that the full penalty  
duty on the excess deficiency  
amounting to Rs 701, ~  
be levied; and he goes on  
to say in his letter: ~ "It  
is stipulated in the bond  
that the penalty duty ~



is to be adjudged by ~  
you". Upon this the ~  
Commissioner appears  
to have issued an order  
in these terms (printed  
at page 22 of the paper  
book): - "I sanction the  
levy of hevatty duty,  
amounting to Rs 701, ~  
on the excess deficiency  
of 350 maunds 13 Seers  
8 Chittaks of salt ~  
found at clearance  
of Thuligram warehouse



4  
No 1, at the rate of -  
Rs 2 per maund -  
In fact what the Commission  
did was to accept the  
recommendation of the  
Collector, and nothing  
more. As for adjudging  
within the meaning of  
the bond, there is nothing  
to show that that was  
done, <sup>and</sup> but that is what  
the parties contracted for.

Now the word -  
implies  
"adjudged" means a  
decision



decision given of Some-

kind ~~in the former~~  
when hearing the  
parties or giving them an  
~~usual in Courts of law.~~  
opportunity of being heard.  
~~Consistent with the~~

~~ordinary sense of justice~~

and <sup>acting</sup> upon what we ~

understand as legal ~

or upon such  
evidence. That as far  
evidence or information as persons  
would ordinarily act upon. That is  
as we can see is the ~

ordinary meaning of

"adjudged" -

It has been ~

suggested that "adjudged"

as used in the bond ~

merely



5  
merely means that  
the Commissioner is  
to fix the amount ~  
without being obliged to  
listen to the representations  
of the parties or to ~  
investigate the real facts  
of the matter. If persons  
contract themselves out  
of their rights to appear  
before the ordinary ~  
tribunal <sup>of the country</sup> of this Country,  
the Contract must be ~  
construed



Constmred with strictness,

Here what the appellants  
did was to place the

Commissioner in the

position of an arbitrator

and did not give him  
~~with the powers of a~~  
power to

~~Court which did not~~

exclude the parties, that

is, the Collector and

the appellants, from

requiring the Commissioner

to listen to their representations

and to decide upon

any



any evidence that they  
may be in a position  
to adduce before him.  
Those are the ordinary  
rules of arbitration.  
And if an arbitrator,  
unless he is empowered  
by the parties to do so,  
omits to give the parties  
an opportunity of being  
heard and of proving  
their case, his award  
is worth nothing.



732 + 735-6 737  
23-4 2

In this view, we  
cannot say that any  
amount was adjudged,  
and these suits must  
consequently fail. We  
accordingly decree the  
appeal and dismiss  
the suits with costs -  
in <sup>all</sup> ~~both~~ Courts

L<sup>d</sup> Totten  
C. J. Hardy

Benjamin A



7  
IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

(CIVIL APPELLATE JURISDICTION.)

APPEAL FROM APPELLATE DECREE No. 733 of 1890.

Appeal preferred on the 28<sup>th</sup>

of June 1890, against the decree

of the Baboo Balloram Mukherjee, Subordinate Judge

of Zillah Kuttack — dated the 8<sup>th</sup>

of March 1890, affirming the decree  
of Baboo Khettramohan Mittra, Moonsiff  
of Balesore, dated the 3<sup>rd</sup> of June 1889.

Raja Baikanto Nath Dey, Sathyendranath Dey, Urush  
Chandra Mondal, Mathuramohan Pahi and Bhogwan  
Chandra Dass, son of Madan Mohan Dass, deceased ~~defendant~~,

Defendants.

Appellants

versus

The Secretary of State for India in Council,

Plaintiff,

Respondent.



✓  
a  
Appeal valued at Rupees 567-1-2 P<sup>as</sup>.

Upon the hearing of this appeal in a Division Court before the

Honorable Justices Richard Tottenham  
and the Honorable Ernest John Leachman

Two of the Judges of this Court.

on the Twenty third day of April — 1901.

—It is ORDERED and DECREED that the record of the lower  
Court be set aside and Plaintiff's  
suit be and it hereby is dismissed.

Subj



And it is further ORDERED and DECREED that the

do pay to the *plaintiff, respondents* *the sum*  
*of Rupees ninety-five, annas nine and paise five only*  
(as per details at foot),

being the amount of costs incurred by

*them*

in this Court,

with interest thereon at the rate of six per cent. per annum, from this date until

realization : And it is further ORDERED and DECREED that the *said plaintiff*

*do pay to the said respondents*

the costs incurred by *them* in the Lower Court, with interest

thereon at the rate aforesaid from the date of the decree of the said Lower Court

until realization.

Dated this *23* day of *April* in the year of our Lord one thousand  
eight hundred and *ninety-one*.

	Rs.	As.	P.
Drawing grounds of appeal	8	.	.
Hearing fee	3	2	.
Court-fee for Memo. of appeal	4	2	12
„ for Vakalatnama	2	.	.
„ for Mokhtarnama	.	.	.
„ for copy of decree	4	.	.
Costs of Translation, &c.	6	13	8
Costs of service of notice of appeal	.	.	.
Costs of former hearing	.	.	.
TOTAL	95	9	5

*Ata Ullah Khan*  
*E. J. W. G.*





INDIA COURT FEE



749  
26.6-90  
Chowdhury

R. 42/12

Baikuntha Nath De  
Satyendra Nath De  
Umesh Chandra Mandal  
Madhura Mohan Das  
Bhagaban Chandra Das  
By their Counsel  
Jyotsnabehn Chatterjee

In the High Court of Judicature at Fort William in Bengal  
in its Appellate Jurisdiction

Memorandum of Appeal from Appellate Decree.

The Secretary of State for India in Council

Plaintiffs

Versus

Burdwan  
180

1. Raja Baikuntha Nath De Bahadur
2. Satyendra Nath De

both of Rajnagar

3. Umesh Chandra Mandal
4. Madan Mohan Das

Bagana Bahadur

both of Barabati

5. Madhura Mohan Das of Shom Pargana Ankhura in the District of Salween.

Defendants



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per

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342-12 J. C. Parker

B 42-12 J. B. Lister  
 Rev. J. B. Lister to L. B. Lister  
 Your name was on

26/1/92  
 28/1/92

B: Baikant Nath Pal for applt

Let this appeal and the analogous  
second appeals Nos. 736 to 737 of 1890 be  
admitted, and the usual notice be  
issued.

Let one set of paper-books be prepared in these cases; and let two sets of tullebance be received.

Mr. H. C. Carey.

Governor Van Buren

The 1<sup>st</sup> July 1890



Defendant No. 4 having died during the pendency of <sup>10</sup> the Appeal in the Court of the Subordinate Judge of Cuttack, by order dated 20<sup>th</sup> February 1890, 1. Bhagaban Chandra Das, 2. Kunga Behari Das, and 3. San Behari Das minors, and 4. Gagan Chandra Das and 5. Satya Chandra Das minors by their mother, and next friend, Simate Paraman Dasi, the sons and heirs of the said Madan Mohan Das deceased, Defendant No. 4 were made Defendants Appellants.

Claim for Penalty duty on every wastage of Salt with interest laid at 564 Rs. 1 Ann. 2 pice.

Raja Badhusha Nath De, Satyendra Nath De, Umach Chandra Mandal, Mathura Mohan Parhi and Bhagaban Chandra Das (son of Madan Mohan Das deceased) Defendants above named appeal to the Honble High Court from the Appellate decree and judgment of the Subordinate Judge of Cuttack dated 5<sup>th</sup> March 1890, Confirming Decree and Judgment of the Mooniff of Balasore bearing the date the 3<sup>rd</sup> day of June 1889, against the Plaintiff Respondent for the following amongst other grounds:-

### Grounds

1. For that the Lower Courts should have held that in the absence of an adjudication by the Commissioner of Orissa, there was no amount due to the Plaintiff and no cause of action against Defdts.
2. For that the Lower Courts have erred in law



law in refusing to enter into the merits of the claim for Penalty duty, and in so doing have refused to exercise jurisdiction vested in them to adjudicate a point of dispute between the parties.

3. For that the Lower Courts have erroneously held that there was an adjudication by the Commissioner of Orissa. They should have held that he did not adjudge the point as to whether penalty was to be levied at the penal rate, and whether Defendants were at all liable under the circumstances to pay any further sum to the Plaintiff.

4. For that the Lower Courts should have treated the letters of the Personal Assistant, and in some cases those of the Commissioner as ex parte orders or sanctions to levy the Penalty duty as recommended by Mr. Grant Collector of Belaswar, and should have held that those letters were not legally binding and conclusive between the parties. The original letters of the Commissioner received in the Appellate Court were drafts kept in his office, and could not be treated as orders issued by him.

5. For that there was no evidence as to the



amount of excess wastage, or deficiency, and the  
 lower Courts were wrong in law in holding that there  
 was an admission of Defendants as to the amount  
 of excess wastage or deficiency. Defendants did  
 not admit the <sup>amount of</sup> deficiency in their explanations, nor  
 did they admit that their explanations were burnt  
 or destroyed, and it was not proved by legal  
 evidence that the explanations were actually destroyed  
 or burnt.

6. For that the Courts below should not have  
 received the report of Mr. Assistant Collector as secondary  
 evidence or any evidence of the contents of the  
 explanation of Defendants.

7. For that the lower Courts have failed to  
 consider the admission of Mr. Carnick, Collector  
 of Baleswar, that the wastage was natural not criminal,  
 that the damage was due to delay in sale caused by  
 the act of Plaintiff in allowing Liverpool Salt to  
 be imported there, - that some of the Ware-houses  
 had been destroyed by fire, and a storm and heavy  
 rains had blown down some Golas, and washed  
 away salt stored therein, and that one set of kegs of  
 the Ware-houses remained always with the Govt Salt Range.



8. For that the lower Courts should have taken into consideration the admitted and prevailing practice of allowing more warehouse and drayage than the stipulated rate of 2 1/2 per cent, whenever such was caused by natural causes or causes over which the Licenses have no control.

9. For that the lower Courts should not have allowed interest.

I Jaceck Kault Phill.  
 I hereby certify that the grounds of appeal set forth in the above petition presented by me in behalf of the said Appellants is a good ground of Appeal from Appellate Decree. Dated this 26th day of June 1890

List of papers

Memorandum of Appeal  
 Decree of the Mooniff  
 Decree of the subordinate judge  
 Vakalatnamah  
 Judgment of the Mooniff  
 Judgment of the subordinate judge.

J. Jaceck Kault Phill.  
 Vakil



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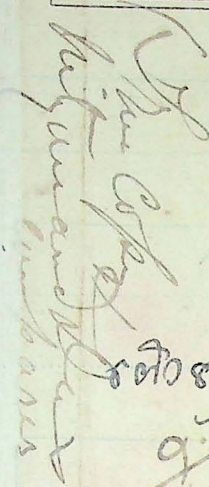
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*[Handwritten Burmese text]*

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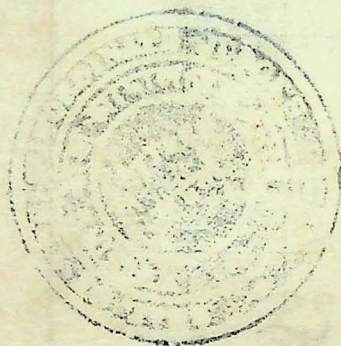
Alzameda & Co  
Companys







Date of application for the copy.	Date of delivery of the requisite stamped sheets.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.







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ONE RUPEE

1370

Original No 1370 of 1888.

733/1890-18

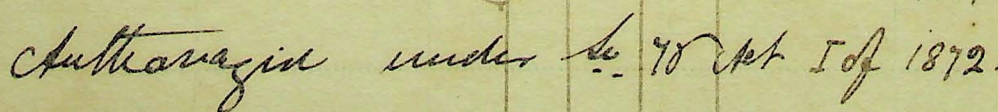


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 K. K. K.  
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BURDWAN GROUP <sup>IV</sup>

No. 180.

APPEAL FROM APPELLATE DECREE,

No. 733 of 1890.

(CUTTACK.)

RAJA BOIKUNT NATH DEY, } Defendants, Appellants,  
BAHADUR, AND OTHERS, }

versus

THE SECRETARY OF STATE FOR } Plaintiff, Respondent.  
INDIA IN COUNCIL, }

Claim for penalty duty on excess wastage of salt with interest, laid at Rs. 567-1-2 pie.

Appeal from Appellate Decree No. 735 of 1890.

RAJA BOIKUNT NATH DEY, } Defendants, Appellants,  
BAHADUR, AND OTHERS, }

versus

THE SECRETARY OF STATE FOR } Plaintiff, Respondent.  
INDIA IN COUNCIL, }

Suit for penalty on excess wastage of salt with interest, laid at Rs. 762-11 annas.

Appeal from Appellate Decree No. 736 of 1890.

RAJA BOIKUNT NATH DEY, } Defendants, Appellants,  
BAHADUR, AND OTHERS, }

versus

THE SECRETARY OF STATE FOR } Plaintiff, Respondent.  
INDIA IN COUNCIL, }

Claim for penalty on excess wastage of salt with interest, laid at Rs. 891-10-4 pie.

NOTE.—These are four appeals. The suits out of which these have arisen were decided by one and the same judgment of the Lower Court. The parties are the same. Under order of Court, dated the 1st July 1890, one paper-book has been prepared in all these four appeals.

UMBICA CHURN ROY,  
Head Translator.

COPY FOR BENCH CLERK

6-13-5-8-69-

733/1890-20



Appeal from Appellate Decree No. 737 of 1890.

RAJA BOIKUNT NATH DEY, }  
BAHADUR, AND OTHERS, } Defendants, Appellants,

versus

THE SECRETARY OF STATE FOR }  
INDIA IN COUNCIL, } Plaintiff, Respondent.

Claim for penalty on excess wastage of salt with interest,  
laid at Rs. 693-2-2-6.

For Appellants—Babus Boikunt Nath Pal and Taruk Nath  
Paulit.

For Respondent—*B. Sham Chandra Banerjee*

Date of institution of suit—19th November 1888.

Date of Appeal in the Lower Appellate Court—12th July 89.

Date on which the Second Appeal was filed—26th June 1890.

Date on which the notice was sent out—

Date of service of notice—

Date of receipt of record from Lower Court—21st July '90.

Date on which translation was sent to Press—24th Sep. 90.

Date of receipt of paper-book from Press, i.e., }  
on which the Appeal was ready for hearing— } 17.11.90

Date on which the Appeal was heard—

I.—Plaint, filed on the 19th November 1888.

IN THE COURT OF THE MUNSIF OF BALASORE.

SUIT No. 1370 OF 1888.

The Secretary of State for India in Council, . Plaintiff,

versus

No. 1, Raja Boikunt Nath Dey, Bahadur, aged at about 39  
years, No. 2, Sachindra Nath Dey, aged at about 23  
years, sons of Raja Shamanund Dey, Bahadur, deceased,  
by caste Tambulis, by profession zemindars, &c., inhabi-  
tants of Rajnagar, Purgana Sunhat; No. 3, Umesh  
Chunder Mondul, aged at about 42 years, son of Puddo-  
lochan Mondul, deceased, by caste Barnik, by profession  
zemindar, &c., inhabitant of Barbati, Purgana Sunhat;  
No. 4, Madan Mohun Das, aged at about 53 years, son  
of Urdhab Churn Das, deceased, by caste Kabir, by pro-  
fession zemindar, &c., inhabitant of Barbati, Purgana  
Sunhat; No. 5, Mathura Mohun Parhi, aged at about  
40 years, son of Shama Churn Parhi, deceased, by caste  
Brahmin, by profession zemindar, &c., inhabitant of  
Iram, Purgana Ankura, in the Munsiffi of Jajpur,

Defendants.

The plaintiff abovenamed states as follows :—

1. The father of the defendants Nos. 1 and 2 and the  
defendants Nos. 3, 4 and 5 having obtained an excise license  
No. 28, dated the 28th December 1880, manufactured 8,696



maunds-30 seers of Panga salt at the Balimunda Arang, in the District of Balasore, under the above (license) and stored the same in *gola* No. 10 at Bhuddruck. On the 30th November 1881, the father of the defendants Nos. 1 and 2 and the defendants Nos. 3, 4 and 5 executed a bond in favor of the plaintiff, in order to pay duty and penalty duty, &c., on the said salt. The plaintiff files the said bond herewith.

2. The sale of the said salt was effected within the jurisdiction of this Court by the defendants. On the 26th June 1883 the sale was closed and the *gola* cleared. There was found a deficiency of 439 maunds-30 seers as wastage.

3. In accordance with the terms of the bond, after deducting the authorized wastage, amounting to 217 maunds-16 $\frac{3}{4}$  seers, at the rate of 2 maunds-20 seers per hundred maunds, there remains an unauthorized deficiency of 222 maunds-13 $\frac{1}{4}$  seers as wastage, as per account given below.

4. There is a sum of Rs. 445 due to the plaintiff from the defendants for duty on the said unauthorized wastage, amounting to 222 maunds-13 $\frac{1}{4}$  seers. The Commissioner of the Orissa Division accorded sanction by a letter No. 180, dated the 8th March 1884, for recovery of the said amount from the father of the defendants Nos. 1 and 2 and the defendants Nos. 3, 4 and 5. The father of the defendants Nos. 1 and 2 and the defendants Nos. 3, 4 and 5 were informed of the same by a notice No. 45, dated the 19th April 1884, and directed to pay the said sum. The father of the defendants Nos. 1 and 2 or the defendants have not paid the said sum as yet.

5. Rupees 567-1-2, principal and interest, as detailed below, are due to the plaintiff from the defendants. The cause of action accrued within the jurisdiction of this Court 15 days after the service of the first notice upon the father of the defendants Nos. 1 and 2 and on the defendants Nos. 3, 4 and 5, namely, on the 5th May 1884.

6. As the late Raja Shamanund Dey, Bahadur, died on the 21st October 1888, leaving the defendants Nos. 1 and 2 as his heirs and successors to all his movable and immovable property, the defendants Nos. 1 and 2 are in possession of all his property alluded to above.

7. The plaintiff prays—

(a) That a decree may be passed in favor of the plaintiff against the defendants for Rs. 567-1-2 with interest under claim on account of duty on unauthorized deficiency of salt as wastage, as well as future interest and costs of the suit.

*Account.*

	M. S. C.
Salt manufactured at Balimunda Arang and stored in <i>gola</i> No. 10 at Bhuddruck . . . . .	8,696 30 0
Sold . . . . .	8,257 0 0
Balance . . . . .	439 30 0
Deduct out of the balance authorized wastage at the rate of 2 maunds-20 seers per hundred maunds . . . . .	217 16 12
The remainder which is unauthorized deficiency . . . . .	222 13 4



Rs. A. P.

Duty on the above at the rate of Rs. 2 per maund	445	0	0
Interest of the same for four years, six months, seventeen days, from 19th April 1884 to 6th November 1888, at 8 annas per cent. per month	122	1	2
TOTAL	567	1	2

*The 2nd November 1888.*

I, Robert Cornish Esq., Collector of Balasore, on behalf of the Secretary of State for India in Council, sitting in my Court, at 10-50 A.M. of the 19th November 1888, do hereby declare that what is stated herein is true to the best of my information and belief.

R. CORNISH,  
Collector.

*The 19th November 1888.*

II.—*Written Statement of Raja Boikunt Nath Dey, Bahadur, Sachindra Nath Dey, Umesh Chandra Mondul, Madan Mohun Das and Mathura Mohun Parhi, defendants Nos. 1 to 5, filed on the 27th February 1889.*

IN THE COURT OF THE MUNSIF OF BALASORE.

SUIT No. 1370 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*versus*

Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

The defendants abovenamed state as follows:—

1. As the sale of the salt was not effected within the jurisdiction of this Court, the plaintiff has no right to bring a suit in this Court.

2. As the plaintiff's claim in the present suit and the claims in suits Nos. 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368 and 1370 have arisen from the same cause of action against the same defendants (he should have brought one suit); but as he has not brought one suit and has instituted different suits in order to put the defendants to heavy expenses, the suit cannot be maintained.

3. The plaintiff brought a suit against the defendants under Act VII of 1880, according to a certificate, and attached the property of the defendants. The present suit has been affected by *res judicata*, as it has been instituted instead of the said suit.

4. As the suit has been instituted contrary to the notice previously served by the plaintiff, it cannot be tried unless a second notice be served.

5. In the face of the fact that there is a rule for allowing a deduction for excess wastage for a period over one year,



the suit claiming the entire deficiency, without allowing such deduction, is improper.

6. As the plaintiff and the defendants keep the keys of the *gola* and sell the salt, the defendants alone cannot be responsible for unauthorized wastage. The unauthorized wastage alleged by the plaintiff not having resulted from any improper act or negligence on the part of the defendants, they are not liable for the same. If there has been any unauthorized deficiency as wastage, it has occurred from natural causes. The defendants cannot therefore be liable for the same.

7. As the defendants have never admitted the quantity of unauthorized wastage, the plaintiff's suit for a definite quantity of the same is improper.

8. While the sale of the Panja salt was not closed, Liverpool salt commanded a large sale, and if, in consequence of the plaintiff not putting a stop to the sale of the same, any wastage has occurred by reason of the (Panja salt) not being sold soon, then the defendants cannot be liable for the same.

9. As the defendants did not enter into any contract with the plaintiff to pay interest, his claim for interest without contract is improper.

10. As the defendants have always obtained remission in respect of the wastage occurring since the manufacture of salt by contract began, and as the present suit has been brought by infringing the rule alluded to above, they cannot be liable according to the Government rule observed at all times. The defendants, if there has been any contract (wastage), should get remission.

11. Other particulars will be represented verbally at the time of hearing the suit. The 27th February 1889.

We, the defendants, do hereby declare that what is herein stated is true to our knowledge. Dated as above.

BOIKUNT NATH DEY,  
*Agent to*  
 SACHINDRA NATH DEY,  
 and  
 UMESH CHUNDER MONDUL.  
 MADAN MOHUN DAS,  
 UPENDRO DAS,

*General agents to defendant No. 5.*

*III.—Decision of Babu Khetter Mohun Mitter, Munsiff of Balasore, dated the 3rd June 1889.*

DISTRICT CUTTACK.

IN THE COURT OF THE MUNSIFF AT BALASORE.

SUIT No. 1354 of 1888.

The Secretary of State for India in Council, *Plaintiff,*  
*against*

Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*



## SUIT No. 1355 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1356 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1357 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1358 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1359 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1360 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1361 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1362 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1363 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*



SUIT No. 1364 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

SUIT No. 1365 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

SUIT No. 1366 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

SUIT No. 1367 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

SUIT No. 1368 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

SUIT No. 1369 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

SUIT No. 1370 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Day, Bahadur, and others, *Defendants.*

The abovementioned suits were tried together, and this judgment will govern all of them.

The case of the plaintiff is :—That the late Raja Shamanund Dey, Bahadur, father of the defendants Nos. 1 and 2, and the other defendants took out salt licenses from the plaintiff under Act VII (B. C.) of 1864 for the purpose of manufacturing and selling Panga salt, and after having stored salt in their different warehouses mentioned in the plaints, executed bonds, as provided by the rules prescribed by the Lieutenant-Governor of Bengal under the above Act, stipulating, among other things, to pay any duty that might be adjudged by the Commissioner of Orissa Division in consequence of any deficiency (beyond the usual allowance of



two and half per cent, as wastage) of salt that might be found in the warehouses at the time of clearance. Certain quantities mentioned in the plaints were found deficient in the warehouses, for which the defendants had taken out licenses, at the time of the clearance of the same, and the defendants are liable to pay the amount mentioned in each plaint as penalty duty on account of excess deficiency in each warehouse. The Commissioner of the Division sanctioned the realization of the penalty duty claimed in these suits, and the father of the defendants Nos. 1 and 2 and the other defendants were served with notices to pay the same, but they did not pay the amounts. The plaintiff therefore claims the penalty duty adjudged by the Commissioner for the excess deficiency in each ware-house, with interest at 6 per cent.

The defendants contend that the plaintiff should have brought one suit for all the causes of action, instead of bringing different suits; that as the plaintiff had instituted cases under certificate Act VII of 1880 for the recovery of the amounts claimed in these suits, these suits are barred by *res-judicata*; that the plaintiff should have given fresh notices in lieu of the notices served before; that the defendants are entitled to wastage allowance for more than a year; that as the duplicate keys of the warehouses were with the plaintiff's officers, the defendants alone cannot be made liable for the excess wastage; that the wastage was not due to any fault or negligence of the defendants, but to natural causes over which they had no control, and they are not liable to pay any penalty for the same; that they did not at any time admit the amount of wastage for which duties have been claimed; that as the Government allowed Liverpool salt to be imported and sold in this Province before the Panga salt manufactured by the defendants was sold out, the excess wastage was due to the Panga salt being not sold sooner than it would have been if the Liverpool salt had not been introduced, and therefore the defendants cannot be made liable for the wastage.

The defendants also object to the jurisdiction of this Court to try the suits other than suits Nos. 1355, 1356, 1357, 1358, 1359, 1362, 1365, and 1368, as the causes of action it is alleged arose in the local limits of the jurisdiction of another Court.

At the trial the defendants' pleader raised another objection, *viz.*, that the claims are barred by limitation as not having been brought within three months from the date of the accrual of the cause of action.

The points for determination in this case are :—

*First.*—Whether this Court has jurisdiction to try the suits mentioned above?

*Second.*—Whether different suits against the same defendants are maintainable?

*Third.*—Are the claims barred by limitation?

*Fourth.*—Whether cases under Act VII of 1880 instituted by the plaintiff bar the present suits?

*Fifth.*—Whether the defendants were entitled to further notices?

*Sixth.*—Is there any provision allowing wastage allowance if salt be unsold for more than a year?



*Seventh.*—Whether the fact of the plaintiff's officers holding duplicate keys of the salt warehouses, disentitle the plaintiff from claiming excess wastage duty solely from the defendants?

*Eighth.*—Was the wastage due to *vis major* and not to any negligence on the part of the defendants? If so, are not the defendants liable to pay the wastage duty?

*Ninth.*—Was not the wastage ascertained and admitted by the defendants?

*Tenth.*—Can the defendants claim exemption because of the introduction and sale of Liverpool salt in this part of the country?

*Eleventh.*—Are not the defendants liable to pay the interest claimed?

*On the first point.*—The causes of action in suits, other than suits Nos. 1355, 1356, 1357, 1358, 1359, 1362, 1365 and 1368 arose beyond the jurisdiction of this Court. All the defendants, except defendant No. 5, reside or carry on business within the local limits of the jurisdiction of this Court, and the plaintiff has obtained leave of this Court to institute the suits here. Consequently the defendants' objections fall to the ground.

There is no authority for the contention that different suits by the same plaintiff against the same defendants on different causes of action cannot be instituted.

The defendants' objection on the ground of limitation is based on Section 41 of Act VII (B.C.) of 1864, which provides that "no suit, action, or other proceeding shall be commenced against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended suit, action, or other proceeding, and of the cause thereof, nor after the expiration of three months from the accrual of the cause of suit, action, or other proceeding." It has been contended on behalf of the plaintiff that these suits are not for anything done in pursuance of this Act. The father of the defendants Nos. 1 and 2 and the other defendants executed the bonds under the rules prescribed by the Lieutenant-Governor of Bengal under Section 11 of the Act, and these suits are actions *ex contractu*, being for recovery of the amounts which the obligors promised to pay on the happening of certain contingencies mentioned in the bonds. The non-payment of the duties adjudged by the Commissioner is not an act done in pursuance of the above Act, but it is a wrong arising out of the contract entered into by the defendants, whereas the Section refers to misfeasance under the Salt Act or improper performance of lawful acts enjoined in the same. I am therefore of opinion that limitation as provided in the section does not apply.

The plaintiff took steps for the recovery of the amounts adjudged by the Commissioner under the Public Demands Recovery Act, but as there is no provision for the summary realization of the amounts in the same, the plaintiff had to withdraw the cases. Under the circumstances *res-judicata* does not certainly apply and bar the present claims.



*On the fifth point.*—The objection taken by the defendants in the 4th paragraph of their written statement as to notice is very vague. They are not entitled as of right to any notice for these suits, as I have already found Section 41 of Act VII (B.C.) of 1864 does not apply. They admit that some notices were served before. What those notices were they do not state. In answer to the 5th interrogatory delivered by the plaintiff, Raja Boikunt Nath Dey, Bahadur, has admitted service of notices. The defendants do not state that demand of the penalty duties was not made on them as provided in the bonds.

The defendants' pleaders have not been able to show any rule or circular providing allowance of wastage for more than a year.

Mr. Cornish, the Collector of the District, in answer to the interrogatories delivered by the defendants, has admitted that *darogas* on behalf of Government had a duplicate key for each *gola* or warehouse. But this fact does not absolve the obligors of the bond from their liability to pay the penal duties which they have agreed to pay under the contracts entered into by them with their eyes open.

*On the eighth point.*—The defendants do not allege in their written statements to what specific natural causes the excess wastage was due, but stated in general terms that the wastage was due to natural causes. At the trial, however, they attempted to prove that it was in consequence of certain *golas* having caught fire and of the leakage of rain-water on account of cyclones or storms. The evidence they have adduced to prove these facts is as vague as their allegations. It cannot be ascertained which *golas* caught fire and when, nor can the exact quantity of salt burnt or damaged be ascertained. On the other hand, it is evident from Mr. Cornish's further or additional answer to the interrogatories, that on the 26th February 1881, 14 warehouses at Bhudruck were burnt; that only warehouses Nos. 1, 5 and 8 had salt stored in them for the season 1879-80; and that the wastage on account of these *golas* is not the subject of these suits.

Then as to the question whether the wastage was due to storms. The evidence on this point is also very vague. There is nothing to show what quantity in each *gola* was wasted or damaged by storms. It is unnecessary to come to any finding on the second part of the 8th point, as the defendants have failed to make out that the wastage was due to causes other than from their own negligence. It is also not necessary to find whether the defendants should have provided against any wastage arising from fire or storms in the construction of their warehouses.

Then comes the question.—Was not the wastage ascertained and admitted by the defendants?

It is admitted by the defendants in their answers to the interrogatories delivered to them, that under the rules of Government it was the practice to call upon them to explain any deficiency of salt found in the warehouses at the time of clearance, and they used to submit explanations accordingly. The explanations given in connection with the wastage



which is in litigation now are not forthcoming. Under the rules of the Board of Revenue, these explanations were classed as C papers and burnt after two years. The presumption that explanations were called for and submitted is also in favor of the plaintiff, under the rule of law, providing that regular performance of judicial and official act is to be presumed—(*vide* Section 114 of the Indian Evidence Act). It has been proved that the explanations submitted by the father of Raja Boikunt Nath and Kumar Sachindra Nath and the other defendants were burnt in regular course of business. The plaintiff is therefore entitled to give secondary evidence of the admission made by the obligors—Exhibit II being the letter written by the then Collector Mr. Grant to the Commissioner, in which the former reports the amount of wastage and the purport of the explanations given by the obligors in each case. The defendants' pleaders have contended that the document is not admissible in evidence. I hold that it is relevant under Section 35 of the Evidence Act, and it is a public document, as it is the record of the acts of an executive public officer in the Salt Department—(*vide* Pirthi Singh and others *versus* the Court of Wards on behalf of Mussummat Sheo Sunduri, XXIII, Weekly Reporter, 272). This document is secondary evidence of the contents of the explanations submitted by the obligors of the bonds. Under the provisions of Section 65 of the Evidence Act, any secondary evidence of the contents of documents which have been destroyed or lost is admissible. Exhibit II shows that the obligors did not object to the quantity found deficient in each *gola*, and offered their reasons for the deficiency. The Commissioner, on the authority of the reports made by the Collector, sanctioned the levy of the penalty duties which form the subject-matter of these suits.

It is here necessary to state that the Government pleader offered to prove the signatures of the Collector and the Commissioner in the reports, and the letters of the latter sanctioning the levy of penalty duties. But I did not allow him to do so, as the Court is bound to take judicial notice of the signatures of Gazetted Officers—(Section 57, Clause 7 of the Evidence Act).

For the above reasons I find the 9th point against the defendants.

It has been proved and admitted by the Collector that Liverpool salt was imported in this Province at the time when the defendants were manufacturing and selling Panga salt in terms of their licenses. The introduction of the salt might have interfered with the sale of the salt stored in the defendants' warehouses. Can the defendants, under such circumstances, legally claim exemption from payment of the penalty duties on account of the excess wastage found in their warehouses? The question resolves itself into the following:—Should Government have disallowed the Liverpool merchants to import salt in this Province? Government could not legally do that. The obligors could not have compelled Government to enter into an agreement to that effect, and there is no such agreement even if it had been legal. The defendants cannot now take objection to their liability on that score.



Apart from the above considerations, I hold, on the principle laid down in *Aghore Nath Banerji versus the Calcutta Tramways Company, Limited*, Indian Law Reports, XI, Calcutta, 232, that the Commissioner's finding is conclusive against the defendants, as they have bound themselves to abide by his decision. I at first doubted whether the adjudgment by the Commissioner in the absence of the defendants would be binding on them. But it appears that the Commissioner acted upon the report of the Collector embodying the explanations submitted by them. It must be presumed that the Commissioner, after considering the reasons submitted, adjudged the penalty duty in each case. If the Collector had not taken explanations from the bonders, and incorporated them in his reports, and if the Commissioner had adjudged the duties upon such one-sided reports, the adjudgment would have been illegal.

I do not see any reason to disallow the interest stipulated in the bonds.

Another objection not taken in the written statement was raised by the defendants at the trial. They urged that under the proviso in Section 11 of Act VII (B.C.) of 1864 no penalty shall exceed Rs. 500. But that provision does not apply here. The penalty provided for in that Section refers to penalties for infringement of the rules prescribed by the Lieutenant-Governor of Bengal under that section. The penalty duties in litigation arise out of the contracts entered into by the bonders with the plaintiff. They are in reality liquidated damages for loss of duty which Government would have sustained on the excess wastage, if there would have (been) no such agreement.

For the above reasons I decree the suits with costs and interest at 6 per cent.

KHETTER MOHUN MITTER,

*Munsiff.*

*The 3rd June 1889.*

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IV.—*Decision of Babu Bulloram Mullick, Subordinate Judge of Cuttack, dated the 8th March 1890.*

APPEALS NOS. 85 TO 101 OF 1889.

Appeal from the decision of Babu Khetter Mohun Mitter, Roy Bahadur, Munsiff of Balasore, in Original Suits Nos 1354 to 1370 of 1888, dated 3rd June 1889.

Raja Boikunt Nath Dey, Bahadur, and others, defendants,  
*Appellants,*

*versus*

The Secretary of State for India in Council, plaintiff,  
*Respondent.*

*For Appellants*—Mr. S. C. Biswas, Babus Ramgoti Gupta and Lal Behari Ghose, pleaders.

*For Respondent*—Babu Huribullab Bose, Government pleader.



It is admitted that all these appeals will be governed by the one and same judgment. The judgment of the Lower Court gives a resumé of the allegations and pleas of both parties, and I do not think it necessary to recapitulate them here.

The decrees passed by the Court below are assailed on certain grounds, out of which the following are only pressed by the learned counsel on behalf of the appellants.

The first is that in the absence of any evidence to prove the bonds relied upon by the respondent, the Lower Court should have thrown out the suits. I find that in the written statements filed by the appellants they did not deny the bonds, and the point does not appear to have been pressed before the Munsiff at the trial. On each bond the Lower Court's endorsement is admitted by defendants or admitted in evidence, and I am compelled to infer that the bonds had not been the *facta probanda* in the Court below. This ground accordingly fails, and I do not think that Section 117, Civil Code Procedure, gives the appellants any help.

The second ground is that the Lower Court erred in law in deciding the ninth issue in favor of the respondent. That issue turns upon the true meaning of a covenant in the bonds which runs thus:—And that we will discharge without objection within 15 days of the issue of the Commissioner's orders any duty that may be adjudged against us by the Commissioner of Orissa on account of any excess or penalty duty in consequence of any deficiency, &c. Appellants' contention is that the question of deficiency or no deficiency is an open question in this Court, and this Court has power to re-adjudge the matter of penalty duty which has been set at rest by the Commissioner. It seems to me that the covenant in the bond is conclusive on the point. I see no reason why the appellants should not be bound by their own act and deed. The word 'adjudged', used in the bond, does not imply an adjudication as contemplated by the Civil Procedure Code. If it had been the bonders' intention to have an adjudication of that sort, they should have got a clause inserted to that effect in the instruments. But the covenant in regard to the power of the Commissioner to adjudge is unreserved and unequivocal. It was not the appellants' case in the Lower Court that the instrument was unconscionable in its character. Rule 21 issued by the Government of Bengal defines the powers of the Commissioner in that respect, and I consider his orders to be conclusive under the law as laid down in Section 11, Bengal Act VII of 1864.

It is needless for me to determine whether the legal status of the Commissioner was that of an arbitrator within the meaning of the Civil Procedure Code, and I am not called upon to decide whether he should have adjudged the matter in dispute as an arbitrator should. Hence the cases which bear upon the true import of Section 28, Indian Contract Act, and the procedure which an arbitrator should adopt are wholly inapplicable.

We are told that the Commissioner did not sign the order adjudging the matter in all the cases. I find from the original letters filed in this Court that each order bears his signature. This ground fails also.



The next ground relates to interest. It was not taken in the Court below, and being a mixed question of law and fact, it cannot be taken here for the first time.

I consider paragraph 9 of the written statement to be materially different from the ground now taken. If we admit that ground, the result would be to order an enquiry into certain additional facts.

The decrees of the Lower Court are substantially correct, and the appeals should be dismissed with costs. Interest at 6 per cent.

BULLORAM MULLICK,  
Subordinate Judge.

*V.—Memorandum of Appeal from Appellate Decree, filed on the 26th June 1890.*

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL, IN ITS APPELLATE JURISDICTION,

Boikunt Nath Dey,  
Sachindra Nath Dey,  
Umesh Chunder Mondul,  
Mathura Mohun Parhi,  
Bhogoban Chunder Das,  
*By their vakeel*  
Boikunt Nath Pal.

The Secretary of State for India in Council, . . . *Plaintiff,*

*versus*

No. 1, Raja Boikunt Nath Dey, Bahadur, No. 2, Sachindra Nath Dey, both of Rajnagar, Purgana Sunhat; No. 3, Umesh Chunder Mondul, No. 4, Madan Mohun Das, both of Barbati, Purgana Sunhat; No. 5, Mathura Mohun Parhi, of Iram, Purgana Ankura, in the District of Balasore, . . . . . *Defendants.*

Defendant No. 4 having died during the pendency of the appeal in the Court of the Subordinate Judge of Cuttack, by order, dated the 20th February 1890, No. 1, Bhogoban Chunder Das, No. 2, Kunjo Behari Das and No. 3, Bon Behari Das, majors, and No. 4, Gagan Chunder Das, No. 5, Satish Chunder Das, minors, by their mother and next friend Sri-moti Taramoni Dasi, the sons and heirs of the said Madan Mohan Das, deceased, defendant No. 4, were made defendants, appellants.

Claim for penalty duty on excess wastage of salt with interest, laid at Rs. 567-1-2.

Raja Boikunt Nath Dey, Sachindra Nath Dey, Umesh Chunder Mondul, Mathura Mohun Parhi and Bhogoban Chunder Das (son of Madan Mohun Das, deceased), defendants abovenamed, appeal to the Honorable High Court from the appellate decree and judgment of the Subordinate Judge of Cuttack, dated the 8th March 1890, confirming the decree and judgment of the Munsiff of Balasore, bearing date the 3rd



day of June 1889, against the plaintiff, respondent, for the following amongst other grounds:—

*First.*—For that the Lower Courts should have held that in the absence of an adjudication by the Commissioner of Orissa, there was no amount due to the plaintiff and no cause of action against defendants.

*Second.*—For that the Lower Courts have erred in law in refusing to enter into the merits of the claim for penalty duty, and in so doing, have refused to exercise jurisdiction vested in them to adjudicate a point of dispute between the parties.

*Third.*—For that the Lower Courts have erroneously held that there was an adjudication by the Commissioner of Orissa. They should have held that he did not adjudge the point as to whether penalty was to be levied at the penal rate, and whether defendants were at all liable under the circumstances to pay any further sum to the plaintiff.

*Fourth.*—For that the Lower Courts should have treated the letters of the Personal Assistant, and in some cases those of the Commissioner, as *ex-parte* orders or sanctions to levy the penalty duty, as recommended by Mr. Grant, Collector of Balasore, and should have held that those letters were not legally binding and conclusive between the parties. The original letters of the Commissioner received in the Appellate Court were drafts kept in his office, and could not be treated as orders issued by him.

*Fifth.*—For that there was no evidence as to the amount of excess wastage or deficiency, and the Lower Courts were wrong in law in holding that there was an admission of defendants as to the amount of excess wastage or deficiency. Defendants did not admit the amount of deficiency in their explanations, nor did they admit that their explanations were burnt or destroyed, and it was not proved by legal evidence that the explanations were actually destroyed or burnt.

*Sixth.*—For that the Courts below should not have received the report of Mr. Grant, Collector, as secondary evidence or any evidence of the contents of the explanation of defendants.

*Seventh.*—For that the Lower Courts have failed to consider the admission of Mr. Cornish, Collector of Balasore, that the wastage was natural, not criminal; that the dryage was due to delay in sale caused by the act of plaintiff in allowing Liverpool salt to be imported there; that some of the warehouses had been destroyed by fire and a storm, and heavy rains had blown down some *golas* and washed away salt stored therein, and that one set of keys of the warehouses remained always with the Government salt daroga.

*Eighth.*—For that the Lower Courts should have taken into consideration the admitted and prevailing practice of allowing more wastage and dryage than the stipulated rate of 2½ per cent., whenever such was caused by natural causes or causes over which the licensees have no control.

*Ninth.*—For that the Lower Courts should not have allowed interest.



*List of Papers.*

Memorandum of Appeal.  
Decree of the Munsiff.  
Decree of the Subordinate  
Judge.  
Vakalatnama.  
Judgment of the Munsiff.  
Judgment of the Subordi-  
nate Judge.

We, Taruk Nath Paulit and  
Boikunt Nath Pal, pleaders  
for the abovenamed appellants,  
do hereby certify that each of  
the grounds of appeal set forth  
in the above petition, presented  
by us on behalf of the said ap-  
pellants, is a good ground of  
Appeal from Appellate Decree.  
Dated this the 26th day of  
June 1890.

BOIKUNT NATH PAL,

TARUK NATH PAULIT,

*Vakeels.*

*For Appellant*—Babu Boikunt Nath Pal.

\*Let this appeal and the analogous Second Appeals Nos.  
735 to 737 of 1890 be admitted, and the usual notice be  
issued.

Let one set of paper-books be prepared in these cases, and  
let two sets of tullubana be received.

W. MACPHERSON.

GOOROO DAS BANERJI.

*The 1st July 1890.*

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MEMO.

*In the matter of*

APPEALS FROM APPELLATE DECREES NOS. 733, 735 TO  
737 OF 1890.

Raja Boikunt Nath Dey and others, . . . *Appellants,*  
*versus*

The Secretary of State for India . . . *Respondent.*

In making the printed paper-book in the above cases,  
which according to the order of the Court would be one set  
only, the following papers ought to be printed in addition to  
the usual pleadings, judgments, &c., viz :—

1. Interrogatories and answers of Mr. R. Cornish, Col-  
lector of Balasore, dated 24th April 1889 (in English).

2. Bond in English of Raja Shamanund Dey and others  
in favor of the Secretary of State for India, dated 30th  
November 1881.

3. Letter (English) from the Collector of Balasore to the  
Commissioner of Revenue, Orissa Division, Cuttack, No. 85,  
dated 18th March 1884.

Memo. No. 179 from Commissioner's Office, Orissa Divi-  
sion, to the Collector of Balasore, dated 8th April 1884.

*Note.*—On arrival of records, similar memos. or letters in  
each case will be pointed out. Please give us notice when  
the records arrive to enable us to point out the papers.

BOIKUNT NATH PAL,

TARUK NATH PAULIT,

*Vakeels for Appellants.*

*The 16th July 1890.*



INCLUDED IN THE PAPER-BOOK AT THE REQUEST OF THE APPELLANT UNDER THE NEW RULE (C1) OF THE RULES FOR THE PREPARATION OF PAPER-BOOKS IN SECOND APPEALS.

*VI.—Interrogatories and answers of Mr. R. Cornish, Collector of Balasore, dated the 24th April 1889 (in English) with the affidavit of 6th May 1889.*

Affidavit to be filed in the Civil Court.

Secretary of State for India *versus* Raja Boikunt Nath Dey Bahadur, and others.

*Defendants' Interrogatories.*

1. In what year the Liverpool salt was first imported to this Province?

Whether before its import Panga salt was the only salt being sold or not?

Since the import of Liverpool salt up to 1885, what was the quantity of the Liverpool and Panga salt respectively sold?

2. Whether one key of the *gola* in which the salt was stored used to remain with the daroga on behalf of Government and the other key with the agent of the contractors?

3. Whether the *golas* were examined by Government officials before the storage of salt therein as to their being fit place for storage?

4. Whether after the storage of salt it used to be examined by Government officials, who were to report the result of their inspection?

5. Whether those officers had authority to weigh the salt if any suspicion arose as to its being deficit or in excess?

6. Whether the salt of the *golas* connected with these suits was ever weighed by any such officer on suspicion of being deficit or in excess?

7. Whether the darogas in regard to their liabilities executed security bond in favor of Government; and

*Plaintiff's Answers.*

In the year 1882-83 Liverpool salt seems to have first been regularly imported from Calcutta.

Both Panga and Karkatch were sold.

Liverpool 70,669 maunds, Panga 5,45,086 maunds were sold till the end of 1885-86, so far as I can ascertain.

Yes.

Yes.

As a matter of official routine, the *golas* should have been so examined. I can find no reports of such inspections.

Yes.

I can find no record of any such weighment.

Yes.



Whether without the presence of the daroga any person could take out at any time any salt from the *golas*?

No, not if the rules were strictly observed.

8. What account, if any, did the daroga and other officials of Salt Department give regarding the excess deficiency of salt claimed in these suits?

I cannot find that they gave or were suspected to give any such account.

9. Whether the salt sold at Bhuddruck *golas* in the years claimed was damaged by the *golas* having caught fire?

Once the Bhuddruck *golas* caught fire, but in what year cannot be ascertained without delay.

10. Whether the wastage claimed for the years accrued during the time of Mr. Grant, and whether he specially reported that the manufacture of Panga salt may be stopped?

The wastage accrued mainly during Mr. Grant's incumbency. I can find no published official record regarding this. I am estopped from further reply by Section 123 of the Evidence Act.

11. Whether the salt was stored during the rainy season or not?

This question is not quite intelligible. Salt (as I understand) was generally stored in dry season, but remained in *gola* throughout the year.

12. Whether the *gola* darogas were equally responsible with the defendants for the due care and misappropriation of the salt?

They would have been held responsible for misappropriation; not for due care as regards wastage.

13. Whether any officer ever reported that the wastage claimed was due to some cause other than natural cause?

No such report is forthcoming.

14. What is the probable wastage per cent. of salt if it is stored for a period exceeding one year?

Cannot say, must depend greatly on care taken by contractors to keep *golas* in proper repair.

15. Whether the former Collector, Mr. Beadon, with a view to test the percentage wastage of salt, did bring salt of Parnanpanta Arang of Urdhab Churn Pothal, contractor, and stored the same within the compound of the Collectorate, and whether the same having been stored for only 11 months, the wastage exceeded 4 per cent?

I can find no published official record of this.

16. Whether Urdhab Churn Pothal was allowed the dryage percentage at that rate?

I believe he was, but have not yet been able to discover the papers connected with his case.



17. Whether for periods prior or subsequent to those for which the cases and for similar dryage for which the cases are, remissions were made to the defendants as also to other contractors of the penalty duty over and above the authorized wastage of  $2\frac{1}{2}$  maunds? Yes, in special cases as a matter of grace on sufficient grounds being shewn.

I, Robert Cornish, Esq., Collector of Balasore, on behalf of the Secretary of State for India, being present in the Court of Mr. Mendes, Deputy Magistrate of Balasore, do hereby declare that what is stated herein is true to the best of my information and belief.

ROBERT CORNISH,  
*Collector of Balasore.*

*The 24th April 1889.*

Sworn in my presence this 24th day of April 1889.

T. MENDES,  
*Deputy Magistrate of Balasore.*

Affidavit to be filed in the Civil Court.

Secretary of State for India *versus* Raja Boikunt Nath Dey, Bahadur, and others.

*Defendants' Interrogatory*  
No. 9.

Whether the salt stored at Bhuddruck gola in the years claimed was damaged by *golas* having caught fire?

*Plaintiff's Answer.*

On the morning of the 26th February 1881, 14 *gola* houses at Bhuddruck were burnt by fire. Only the *golas* Nos. 1, 5 and 8 had salt in them of the season 1879-80. The wastage on account of these *golas* is not in litigation now.

I, Robert Cornish, Esq., Collector of Balasore, on behalf of the Secretary of State for India, being present in the Court of Mr. Mendes, Deputy Magistrate of Balasore, do hereby declare that what is stated herein is true to the best of my information and belief.

ROBERT CORNISH,  
*Collector of Balasore.*

*The 6th May 1889.*

Sworn before me this 6th day of May 1889.

T. MENDES,  
*Deputy Magistrate of Balasore.*



*VII.—Bond (in English) of Raja Shamanund Dey and others in favor of the Secretary of State for India, dated the 30th November 1881.*

We, Raja Shamanund Dey, Umesh Chunder Mondul, Madan Mohun Das and Mathura Mohun Parhi, of Balasore, and salt licensees of Arang Balisahi, having obtained permission from the Collector of Balasore to store, without previous payment of duty, in the warehouse at Kuligram No. 1 for a period of 36 months (5,366-20) maunds of salt manufactured under excise license No. 37, dated the 28th December 1880, do hereby jointly and severally for ourselves, our heirs and representatives covenant with the Secretary of State for India that we will faithfully observe the provisions of Act VII (B.C.) of 1864 and the rules prescribed by the Lieutenant-Governor of Bengal in accordance with Sections 11 and 13 of that Act to be observed by persons obtaining permission to warehouse salt under the provisions thereof, and that in the event of our failing to manufacture a sufficient quantity of salt to yield a revenue equal to twenty times the cost of the Preventive Establishment, we will pay to the Collector on demand such sum as he may require on account of the cost of the said establishment, and on failure of payment by us, we authorize the Collector to realize the amount by sale at public auction of our salt stored in the warehouse, and further that we will at all times, when required by the officer in charge of the said warehouse, produce the key of the said warehouse, and afford to such officers or to such other person or persons as the Collector may direct, free ingress to such warehouse, in order that such officers or persons may weigh and examine the said salt, and if on such weighment and examination there shall be any deficiency (beyond the authorized allowance), we will within such period of time as the Collector may order, pay the duty on the quantity so deficient, and further that we will pay to the Board of Revenue, Lower Provinces of the Presidency of Fort William in Bengal, within 156 weeks from the date of this bond, or within such further time as the said Board of Revenue shall in writing allow on that behalf, all dues whether of excise duty, warehouse dues, and other lawful charges which shall be demandable in respect of the said salt, and that we will discharge without objection, within 15 days of the issue of the Commissioner's orders, any duty that may be adjudged against us by the Commissioner of Orissa on account of any excess or penalty duty in consequence of any deficiency (beyond the usual allowance of  $2\frac{1}{2}$  per cent. as wastage) of salt found in the said warehouse at the time of clearance, together with interest on every such sum at the rate of 6 per cent. per annum from the date of demand of the said sum being made in writing by the said officer in charge of the said warehouse. And in case we fail to observe the above or any of the above conditions, we hereby jointly and severally bind ourselves, our heirs and representatives and each of them to pay to the said Secretary of State for India the sum of Rs. 14,087-1 as liquidated damages for the breach of any of the above conditions, and we further authorize the said Secretary of State for India, while reserving all rights



under this bond, to hold such salt as a security for the payment of such sums as may be adjudged to be due from us, and to sell such salt for the realization of the same, and in case we fail to produce when required the keys of the said warehouse, we further authorize the officer in charge of the said warehouse to force open the door of the said warehouse and to examine and weigh the salt in our absence, after giving to us or our agents one day's notice of his intention, or in case neither we nor our agents are present on the spot, after affixing such notice for one day to the warehouse door, and in case such weighment prove the existence of any deficiency in excess of authorized wastage, we will pay the duty on the quantity deficient within such time as the Collector may direct.

In witness whereof we hereby affix our signatures to the above bond, this 30th day of November 1881.

*Witnesses.*

(Illegible.)

(Illegible.)

শ্রী গজেন্দ্র চন্দ্র মোক্তার আম তঃ

শ্রী রাজা শ্যামানন্দ দেও,

উমেশ চন্দ্র মণ্ডল ও

মদন মোহন দাস ও

মথুরা মোহন পাড়ী

Signed in my presence this 30th day of November 1881.

SHITAL NATH BOSE,

*Deputy Collector, in charge salt.*

*VIII.—Letter (English) from the Collector of Balasore to the Commissioner of Revenue, Orissa Division, Cuttack, No. 85, dated 18th March 1884.*

BALASORE COLLECTORATE, SALT DEPARTMENT.

No. 85.

From

THE COLLECTOR OF BALASORE,

To

THE COMMISSIONER OF REVENUE, ORISSA  
DIVISION, CUTTACK.

SIR,

I have the honor, with reference to the extract reproduced in the margin from this office Return No. IV B, for the month of February 1884, to report the clearance of excise salt of Arang Balisahi manufactured during the season 1880-81 and stored

*Extract from Return No. IV B. for month of February 1884.*

1	2	3	4	5
Year of the manufacture as in column 1.	Name of arang as in column 1.	Quantity of salt stored in the warehouse as in column 10.	Quantity of salt sold as in column 13.	Balance as in column 14.
		Mds. S.	Mds. S.	Mds. S.
1880-81	Balisahi.	5,366 20	4,892 0	484 20



in Kuligram warehouse No. 1. The *gola* account stood thus:—

Quantity of salt stored	.	.	.	.	5,366	20	0
Ditto sold	.	.	.	.	4,882	0	0
Deficiency	.	.	.	.	484	20	0
Authorized wastage at $2\frac{1}{2}$ per cent.	.	.	.	.	134	6	8
Excess deficiency	.	.	.	.	350	13	8

2. The bonders explain that the salt met with rain on its transit from Arang to *gola*, and wet salt was stored in the *gala*; the *gola* stands on the bed of the river; the salt took over three years to be sold, and the thatch of the *gola* was accidentally blown away by heavy wind in March 1883, corresponding to Falgun 1290.

3. The salt was stored in the *gola* from the 18th May 1881 to 26th June 1881. The sale commenced on the 10th July 1882, and the *gola* was cleared on the 20th February 1883.

4. Remission in consideration of the salt being wet was granted at the time, *vide* transit deficiency report for 1880-81. The plea of the salt being sold over three years is unsatisfactory; for it is due to the negligence of the bonders. Had the *gola* thatches been strongly built, the accident referred to would not have occurred. I cannot therefore allow any remission, and I recommend that full penalty duty on the excess deficiency, *viz.*, 350 maunds-13 seers-8 chittaks, at Rs. 2 per maund, amounting to Rs. 701, be levied.

5. It is stipulated in the bond that the penalty duty is to be adjudged by you.

I have, &c.,

S. GRANT,

Collector.

IX.—Memorandum No. 179 from Commissioner's Office, Orissa Division, to the Collector of Balasore, dated the 8th April 1884.

Memorandum No. 179.

COMMISSIONER'S OFFICE, ORISSA DIVISION, CUTTACK.

To

THE COLLECTOR OF BALASORE.

The 8th April 1884.

Your No. 85 of the 18th ultimo.

I sanction the levy of penalty duty, amounting to Rs. 701, on the excess deficiency of 350 maunds-13 seers-8 chittaks of salt found at clearance of Kuligram warehouse No. 1, at the rate of Rs. 2 per maund.

JUGO MOHUN ROY,

Personal Assistant, for Commissioner.



## APPENDIX.

*Plaint, filed on the 19th November 1888.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1360 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*versus*

No. 1, Raja Boikunt Nath Dey, Bahadur, aged at about 39 years, No. 2, Sachindra Nath Dey, aged at about 23 years, sons of Raja Shamanund Dey, Bahadur, deceased, by caste Tambulis, by profession zemindars, &c., inhabitants of Rajnagar, Purgana Sunhat; No. 3, Umesh Chunder Mondul, aged at about 42 years, son of Puddolochan Mondul, deceased, by caste Barnik, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 4, Madan Mohan Das, aged at about 53 years, son of Urdhab Churn Das, deceased, by caste Kabir, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 5, Mathura Mohun Parhi, aged at about 40 years, son of Shama Churn Parhi, by caste Brahmin, by profession zemindar, &c., inhabitant of Iram, Purgana Ankura, in the Munsiff of Jajpur,  
*Defendants.*

The plaintiff abovenamed states as follows:—

Paragraphs 1 to 6 are substantially similar to those of the plaint in case No. 733 of 1890.

7. The plaintiff prays—

- (a) That a decree may be given in favor of the plaintiff against the defendants for Rs. 762-11 with interest under claim on account of duty on unauthorized deficiency of salt as wastage, as well as future interest and costs of the suit.

*Account.*

	M.	S.	C.
Salt manufactured at Bedaipur Arang and stored in <i>gola</i> No. 5 at Bhuddruck . . . . .	7,288	0	0
Sold . . . . .	6,803	7	0
Balance . . . . .	484	33	0
Deduct out of the balance authorized wastage, at the rate of 2 maunds, 20 seers per hundred maunds . . . . .	182	8	0
The remainder which unauthorized . . . . .	302	25	0
	Rs. A. P.		
Duty on the above, at the rate of Rs. 2 per maund . . . . .	605	8	0
Interest of the same for 4 years, 3 months, 27 days, from 9th July 1884 to 6th November 1888, at the rate of 8 annas per cent. per month . . . . .	157	3	0
TOTAL . . . . .	762	11	0

*The 2nd November 1888.*

Verification similar to that in case No. 733 of 1890.



*Written Statement of Raja Boikunt Nath Dey, Bahadur, Sachindra Nath Dey, Umesh Chunder Mondul, Madan Mohun Das and Mathura Mohun Parhi, defendants Nos. 1 to 5, filed on the 27th November 1889.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1360. OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*

*versus*

Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

The defendants abovenamed state as follows:—

Paragraphs 1 to 11 are similar to those of the written statement in case No. 733 of 1890.

Verification similar to that in the above case.

*Plaint, filed on the 19th November 1888.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1357 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*

*versus*

No. 1, Raja Boikunt Nath Dey, Bahadur, aged at about 39 years, No. 2, Sachindra Nath Dey, aged at about 23 years, sons of Raja Shamanund Dey, Bahadur, deceased, by caste Tambulis, by profession zemindars, &c., inhabitants of Rajnagar, Purgana Sunhat; No. 3, Umesh Chunder Mondul, aged at about 42 years, son of Puddo-lochun Mondul, deceased, by caste Barnik, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 4, Madan Mohun Das, aged at about 53 years, son of Urdhab Churn Das, deceased, by caste Kabir, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 5, Mathura Mohun Parhi, aged about 40 years, son of Shama Churn Parhi, deceased, by caste Brahmin, by profession zemindar, &c., inhabitant of Iram, Purgana Ankura, in the Munsiff of Jajpur, . *Defendants.*

The plainti abovenamed states as follows:—

Paragraphs 1 to 6 are substantially similar to those of the plaint in case No. 733 of 1890.

7. The plaintiff prays—

(a) That a decree may be passed in favor of the plaintiff against the defendants for Rs. 891-10-4 pie with interest under claim on account of duty on unauthorized deficiency of salt as wastage, as well as future interest and cost of the suit.



*Account.*

	M. S. C.
Salt manufactured at Balisahi Arang and stored in gola No. 1 at Kuligram . . . . .	5,366 20 0
Sold . . . . .	4,882 0 0
Balance . . . . .	484 20 0
Deduct out of the balance authorized wastage, at the rate of 2 maunds-20 seers per hundred maunds . . . . .	134 6 8
The remainder which is unauthorized deficiency	350 13 8
	Rs. A. P.
Duty on the above at the rate of Rs. 2 per maund . . . . .	701 0 0
Interest of the same for 4 years, 6 months, 17 days, from 19th April 1884 to 6th November 1888, at 8 annas per cent. per month . . . . .	190 10 4
TOTAL . . . . .	391 10 4

*The 2nd November 1888.*

Verification similar to that in case No. 733 of 1890.

*Written Statement of Raja Boikunt Nath Dey, Bahadur, Sachindra Nath Dey, Umesh Chunder Mondul, Madan Mohun Das and Mathura Mohun Parki, defendants Nos. 1 to 5, filed on the 27th February 1889.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1357 OF 1888.

The Secretary of State for India in Council, . . *Plaintiff,*

*versus*

Raja Boikunt Nath Dey and others, . . . *Defendants.*

The defendants abovenamed state as follows :—

Paragraphs 1 to 11 are similar to those of the written statement in case No. 733 of 1890.

Verification similar to that in the above case.

*Plaint, filed on the 19th November 1888.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1367 OF 1888.

The Secretary of State for India in Council, . . *Plaintiff,*

*versus*

No. 1, Raja Boikunt Nath Dey, Bahadur, aged at about 39  
733 G



years, No. 2, Sachindra Nath Dey, aged at about 23 years, sons of Raja Shamanund Dey, Bahadur, deceased, by caste Tambulis, by profession zemindars, &c., inhabitants of Rajnagar, Purgana Sunhat; No. 3, Umesh Chunder Mondul, aged at about 42 years, son of Puddolochun Mondul, deceased, by caste Barnik, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 4, Madan Mohun Das, aged at about 53 years, son of Urdhab Churn Das, deceased, by caste Kabir, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 5, Mathura Mohun Parhi, aged at about 40 years, son of Shama Churn Parhi, deceased, by caste Brahmin, by profession zemindar, &c., inhabitant of Iram, Purgana Ankura, in the Munsiffi of Jajpur,

*Defendants.*

The plaintiff abovenamed states as follows :—

Paragraphs 1 to 6 are substantially similar to those of the plaint in case No. 733 of 1890.

7. The plaintiff prays—

- (a) That a decree may be given in favor of the plaintiff against the defendants for Rs. 693-2-10 pie with interest under claim on account of duty on unauthorized deficiency of salt as wastage, as well as future interest and cost of the suit.

*Account.*

	M.	S.	C.
Salt manufactured at Balasore Arang and stored in gola No. 1 at Chandbali	5,040	6	11
Sold	4,642	0	0
Balance	398	6	11
Deduct out of the balance authorized wastage at the rate of 2 maunds-20 seers per hundred maunds	126	0	3
The remainder which is unauthorized wastage	272	6	8
			Rs. A. P.
Duty on the above at the rate of Rs. 2 per maund	544	8	0
Interest of the same for 4 years, 6 months, 17 days, from 19th April 1884 to 6th November 1888, at 8 annas per cent. per month	148	10	10
TOTAL	693	2	10

*The 2nd November 1888.*

Verification similar to that in case No. 733 of 1890.



*Written Statement of Raja Boikunt Nath Dey, Bahadur, Sachindra Nath Dey, Umesh Chunder Mondul, Madan Mohun Das and Mathura Mohun Parhi, defendants Nos. 1 to 5, filed on the 27th February 1889.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1367 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*

*versus*

Raja Boikunt Nath Dey, Bahadur, and others. *Defendants.*

The defendants abovenamed state as follows :—

Paragraphs 1 to 11 are similar to those of the written statement in case No. 733 of 1890.

Verification similar to that in the above case.

*Pleadings translated by—Marfadal Huq, Extra Tr.*

*Proofs compared by—J. Ainslie.*

The decisions of the Lower Courts are in English.



# APPEAL FROM APPELLATE DECREE No. 733, 735, 736 & 737 OF 1890.

*Raja Baikunt Nathu Singh, Bahadur, and others, APPELLANTS,*

*versus*

*The Secretary of State for India in Council, RESPONDENT.*

## Memorandum of Receipts and Charges in this Appeal.

(Rules relating to Special Appeals, dated 1st July 1877.)

DATE.	RECEIPTS.	R	a.	p.	CHARGES.	R	a.	p.	CHARGES IN RESPECT OF DOCUMENTS INSERTED UNDER RULE (CI.)		
									R	a.	p.
	DEPOSITED BY—				Estimating <sup>3350</sup> 2100 } words, at 10,000 words per Rupee		5	4		3	4
	Appellant . . .	30	-	-							
	Respondent . . .	30	-	-	Translating 1440 words, at 200 words per Rupee (including charge for paper)						
					<i>Comparing 1910 words at 182 words per Rupee</i>	7	7	6			
					Copying 2100 words, at 1,440 words per Rupee					1	7
										4	
					Examining Manuscripts, words, at 2,880 words per Rupee						18
					Examining proofs, 2812 + 2250 words, at 1,125 words per Rupee	2	8	-		2	-
	To be recovered from Appellant under Rule 4, within two weeks from this date . . .				Printing (actual charge)	6	2	3		13	4
					To be } to Appellant .	20	15	3		-	-
					refund- } „ Respondent	20	15	3		-	-
		18	5	1							
	TOTAL . . .	78	5	1	TOTAL . . .	60	-	-		18	5

HIGH COURT, &C.,

*The 31<sup>st</sup> January 1891.*

*Deputy Registrar.*

*To, Babu Baikunt Nathu Paul,*  
*vakel for the appellants*  
*Babu Hem Chunder Banerjee,*  
*vakel for the Respondents.*

733/1890-30



BURDWAN GROUP *IV*

No. 180.

APPEAL FROM APPELLATE DECREE,

No. 733 of 1890.

(CUTTACK.)

RAJA BOIKUNT NATH DEY, }  
BAHADUR, AND OTHERS, } *Defendants, Appellants,*

*versus*

THE SECRETARY OF STATE FOR }  
INDIA IN COUNCIL, } *Plaintiff, Respondent.*

Claim for penalty duty on excess wastage of salt with interest, laid at Rs. 567-1-2 pie.

Appeal from Appellate Decree No. 735 of 1890.

RAJA BOIKUNT NATH DEY, }  
BAHADUR, AND OTHERS, } *Defendants, Appellants,*

*versus*

THE SECRETARY OF STATE FOR }  
INDIA IN COUNCIL, } *Plaintiff, Respondent.*

Suit for penalty on excess wastage of salt with interest, laid at Rs. 762-11 annas.

Appeal from Appellate Decree No. 736 of 1890.

RAJA BOIKUNT NATH DEY, }  
BAHADUR, AND OTHERS, } *Defendants, Appellants,*

*versus*

THE SECRETARY OF STATE FOR }  
INDIA IN COUNCIL, } *Plaintiff, Respondent.*

Claim for penalty on excess wastage of salt with interest, laid at Rs. 891-10-4 pie.

NOTE.—These are four appeals. The suits out of which these have arisen were decided by one and the same judgment of the Lower Court. The parties are the same. Under order of Court, dated the 1st July 1890, one paper-book has been prepared in all these four appeals.

UMBICA CHURN ROY,  
*Head Translator.*

733/1890-35



# Appeal from Appellate Decree No. 737 of 1890.

RAJA BOIKUNT NATH DEY, } Defendants, Appellants,  
BAHADUR, AND OTHERS, . }

versus

THE SECRETARY OF STATE FOR } Plaintiff, Respondent.  
INDIA IN COUNCIL, . }

Claim for penalty on excess wastage of salt with interest,  
laid at Rs. 693-2-2-6.

For Appellants—Babus Boikunt Nath Pal and Taruk Nath  
Paulit.

For Respondent—

Date of institution of suit—19th November 1888.

Date of Appeal in the Lower Appellate Court—12th July 89.

Date on which the Second Appeal was filed—26th June 1890.

Date on which the notice was sent out—

Date of service of notice—

Date of receipt of record from Lower Court—21st July '90.

Date on which translation was sent to Press—24th Sep. 90.

Date of receipt of paper-book from Press, i.e., } 17.11.90  
on which the Appeal was ready for hearing—

Date on which the Appeal was heard—

I.—Plaint, filed on the 19th November 1888.

IN THE COURT OF THE MUNSIF OF BALASORE.

SUIT No. 1370 OF 1888.

The Secretary of State for India in Council, Plaintiff,  
versus

No. 1, Raja Boikunt Nath Dey, Bahadur, aged at about 39 years, No. 2, Sachindra Nath Dey, aged at about 23 years, sons of Raja Shamanund Dey, Bahadur, deceased, by caste Tambulis, by profession zemindars, &c., inhabitants of Rajnagar, Purgana Sunhat; No. 3, Umesh Chunder Mondul, aged at about 42 years, son of Puddo-lochan Mondul, deceased, by caste Barnik, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 4, Madan Mohun Das, aged at about 53 years, son of Urdhab Churn Das, deceased, by caste Kabir, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 5, Mathura Mohun Parhi, aged at about 40 years, son of Shama Churn Parhi, deceased, by caste Brahmin, by profession zemindar, &c., inhabitant of Iram, Purgana Ankura, in the Munsiffi of Jajpur,  
Defendants.

The plaintiff abovenamed states as follows:—

1. The father of the defendants Nos. 1 and 2 and the defendants Nos. 3, 4 and 5 having obtained an excise license No. 28, dated the 28th December 1880, manufactured 8,696



maunds-30 seers of Panga salt at the Balimunda Arang, in the District of Balasore, under the above (license) and stored the same in *gola* No. 10 at Bhuddruck. On the 30th November 1881, the father of the defendants Nos. 1 and 2 and the defendants Nos. 3, 4 and 5 executed a bond in favor of the plaintiff, in order to pay duty and penalty duty, &c., on the said salt. The plaintiff files the said bond herewith.

2. The sale of the said salt was effected within the jurisdiction of this Court by the defendants. On the 26th June 1883 the sale was closed and the *gola* cleared. There was found a deficiency of 439 maunds-30 seers as wastage.

3. In accordance with the terms of the bond, after deducting the authorized wastage, amounting to 217 maunds-16 $\frac{3}{4}$  seers, at the rate of 2 maunds-20 seers per hundred maunds, there remains an unauthorized deficiency of 222 maunds-13 $\frac{1}{4}$  seers as wastage, as per account given below.

4. There is a sum of Rs. 445 due to the plaintiff from the defendants for duty on the said unauthorized wastage, amounting to 222 maunds-13 $\frac{1}{4}$  seers. The Commissioner of the Orissa Division accorded sanction by a letter No. 180, dated the 8th March 1884, for recovery of the said amount from the father of the defendants Nos. 1 and 2 and the defendants Nos. 3, 4 and 5. The father of the defendants Nos. 1 and 2 and the defendants Nos. 3, 4 and 5 were informed of the same by a notice No. 45, dated the 19th April 1884, and directed to pay the said sum. The father of the defendants Nos. 1 and 2 or the defendants have not paid the said sum as yet.

5. Rupees 567-1-2, principal and interest, as detailed below, are due to the plaintiff from the defendants. The cause of action accrued within the jurisdiction of this Court 15 days after the service of the first notice upon the father of the defendants Nos. 1 and 2 and on the defendants Nos. 3, 4 and 5, namely, on the 5th May 1884.

6. As the late Raja Shamanund Dey, Bahadur, died on the 21st October 1888, leaving the defendants Nos. 1 and 2 as his heirs and successors to all his movable and immovable property, the defendants Nos. 1 and 2 are in possession of all his property alluded to above.

7. The plaintiff prays--

(a) That a decree may be passed in favor of the plaintiff against the defendants for Rs. 567-1-2 with interest under claim on account of duty on unauthorized deficiency of salt as wastage, as well as future interest and costs of the suit.

*Account.*

	M. S. C.
Salt manufactured at Balimunda Arang and stored in <i>gola</i> No. 10 at Bhuddruck . . .	8,696 30 0
Sold . . . . .	8,257 0 0
Balance . . . . .	439 30 0
Deduct out of the balance authorized wastage at the rate of 2 maunds-20 seers per hundred maunds . . . . .	217 16 12
The remainder which is unauthorized deficiency . . . . .	222 13 4



Rs. A. P.

Duty on the above at the rate of Rs. 2 per maund	445	0	0
Interest of the same for four years, six months, seventeen days, from 19th April 1884 to 6th November 1888, at 8 annas per cent. per month.	122	1	2
TOTAL	567	1	2

*The 2nd November 1888.*

I, Robert Cornish Esq., Collector of Balasore, on behalf of the Secretary of State for India in Council, sitting in my Court, at 10-50 A.M. of the 19th November 1888, do hereby declare that what is stated herein is true to the best of my information and belief.

R. CORNISH,  
*Collector.*

*The 19th November 1888.*

II.—*Written Statement of Raja Boikunt Nath Dey, Bahadur, Sachindra Nath Dey, Umesh Chandra Mondul, Madan Mohun Das and Mathura Mohun Porhi, defendants Nos. 1 to 5, filed on the 27th February 1889.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1370 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*versus*

Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

The defendants abovenamed state as follows:—

1. As the sale of the salt was not effected within the jurisdiction of this Court, the plaintiff has no right to bring a suit in this Court.

2. As the plaintiff's claim in the present suit and the claims in suits Nos. 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368 and 1370 have arisen from the same cause of action against the same defendants (he should have brought one suit); but as he has not brought one suit and has instituted different suits in order to put the defendants to heavy expenses, the suit cannot be maintained.

3. The plaintiff brought a suit against the defendants under Act VII of 1880, according to a certificate, and attached the property of the defendants. The present suit has been affected by *res judicata*, as it has been instituted instead of the said suit.

4. As the suit has been instituted contrary to the notice previously served by the plaintiff, it cannot be tried unless a second notice be served.

5. In the face of the fact that there is a rule for allowing a deduction for excess wastage for a period over one year,



the suit claiming the entire deficiency, without allowing such deduction, is improper.

6. As the plaintiff and the defendants keep the keys of the *gola* and sell the salt, the defendants alone cannot be responsible for unauthorized wastage. The unauthorized wastage alleged by the plaintiff not having resulted from any improper act or negligence on the part of the defendants, they are not liable for the same. If there has been any unauthorized deficiency as wastage, it has occurred from natural causes. The defendants cannot therefore be liable for the same.

7. As the defendants have never admitted the quantity of unauthorized wastage, the plaintiff's suit for a definite quantity of the same is improper.

8. While the sale of the Panja salt was not closed, Liverpool salt commanded a large sale, and if, in consequence of the plaintiff not putting a stop to the sale of the same, any wastage has occurred by reason of the (Panja salt) not being sold soon, then the defendants cannot be liable for the same.

9. As the defendants did not enter into any contract with the plaintiff to pay interest, his claim for interest without contract is improper.

10. As the defendants have always obtained remission in respect of the wastage occurring since the manufacture of salt by contract began, and as the present suit has been brought by infringing the rule alluded to above, they cannot be liable according to the Government rule observed at all times. The defendants, if there has been any contract (wastage), should get remission.

11. Other particulars will be represented verbally at the time of hearing the suit. The 27th February 1889.

We, the defendants, do hereby declare that what is herein stated is true to our knowledge. Dated as above.

BOIKUNT NATH DEY,  
*Agent to*  
 SACHINDRA NATH DEY,  
 and  
 UMESH CHUNDER MONDUL.  
 MADAN MOHUN DAS,  
 UPENDRO DAS,

*General agents to defendant No. 5.*

III.—*Decision of Babu Khetter Mohun Mitter, Munsiff of Balasore, dated the 3rd June 1889.*

DISTRICT CUTTACK.

IN THE COURT OF THE MUNSIFF AT BALASORE.

SUIT No. 1354 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*

Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*



## SUIT No. 1355 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1356 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1357 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1358 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1359 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1360 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1361 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1362 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1363 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*



## SUIT No. 1364 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1365 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1366 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1367 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1368 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1369 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

## SUIT No. 1370 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*  
*against*  
 Raja Boikunt Nath Day, Bahadur, and others, *Defendants.*

The abovementioned suits were tried together, and this judgment will govern all of them.

The case of the plaintiff is :—That the late Raja Shamanund Dey, Bahadur, father of the defendants Nos. 1 and 2, and the other defendants took out salt licenses from the plaintiff under Act VII (B. C.) of 1864 for the purpose of manufacturing and selling Panga salt, and after having stored salt in their different warehouses mentioned in the plaints, executed bonds, as provided by the rules prescribed by the Lieutenant-Governor of Bengal under the above Act, stipulating, among other things, to pay any duty that might be adjudged by the Commissioner of Orissa Division in consequence of any deficiency (beyond the usual allowance of



two and half per cent, as wastage) of salt that might be found in the warehouses at the time of clearance. Certain quantities mentioned in the plaints were found deficient in the warehouses, for which the defendants had taken out licenses, at the time of the clearance of the same, and the defendants are liable to pay the amount mentioned in each plaint as penalty duty on account of excess deficiency in each warehouse. The Commissioner of the Division sanctioned the realization of the penalty duty claimed in these suits, and the father of the defendants Nos. 1 and 2 and the other defendants were served with notices to pay the same, but they did not pay the amounts. The plaintiff therefore claims the penalty duty adjudged by the Commissioner for the excess deficiency in each ware-house, with interest at 6 per cent.

The defendants contend that the plaintiff should have brought one suit for all the causes of action, instead of bringing different suit; that as the plaintiff had instituted cases under certificate Act VII of 1880 for the recovery of the amounts claimed in these suits, these suits are barred by *res-judicata*; that the plaintiff should have given fresh notices in lieu of the notices served before; that the defendants are entitled to wastage allowance for more than a year; that as the duplicate keys of the warehouses were with the plaintiff's officers, the defendants alone cannot be made liable for the excess wastage; that the wastage was not due to any fault or negligence of the defendants, but to natural causes over which they had no control, and they are not liable to pay any penalty for the same; that they did not at any time admit the amount of wastage for which duties have been claimed; that as the Government allowed Liverpool salt to be imported and sold in this Province before the Panga salt manufactured by the defendants was sold out, the excess wastage was due to the Panga salt being not sold sooner than it would have been if the Liverpool salt had not been introduced, and therefore the defendants cannot be made liable for the wastage.

The defendants also object to the jurisdiction of this Court to try the suits other than suits Nos. 1355, 1356, 1357, 1358, 1359, 1362, 1365, and 1368, as the causes of action it is alleged arose in the local limits of the jurisdiction of another Court.

At the trial the defendants' pleader raised another objection, *viz.*, that the claims are barred by limitation as not having been brought within three months from the date of the accrual of the cause of action.

The points for determination in this case are :—

*First.*—Whether this Court has jurisdiction to try the suits mentioned above?

*Second.*—Whether different suits against the same defendants are maintainable?

*Third.*—Are the claims barred by limitation?

*Fourth.*—Whether cases under Act VII of 1880 instituted by the plaintiff bar the present suits?

*Fifth.*—Whether the defendants were entitled to further notices?

*Sixth.*—Is there any provision allowing wastage allowance if salt be unsold for more than a year?



*Seventh.*—Whether the fact of the plaintiff's officers holding duplicate keys of the salt warehouses, disentitle the plaintiff from claiming excess wastage duty solely from the defendants?

*Eighth.*—Was the wastage due to *vis major* and not to any negligence on the part of the defendants? If so, are not the defendants liable to pay the wastage duty?

*Ninth.*—Was not the wastage ascertained and admitted by the defendants?

*Tenth.*—Can the defendants claim exemption because of the introduction and sale of Liverpool salt in this part of the country?

*Eleventh.*—Are not the defendants liable to pay the interest claimed?

*On the first point.*—The causes of action in suits, other than suits Nos. 1355, 1356, 1357, 1358, 1359, 1362, 1365 and 1368 arose beyond the jurisdiction of this Court. All the defendants, except defendant No. 5, reside or carry on business within the local limits of the jurisdiction of this Court, and the plaintiff has obtained leave of this Court to institute the suits here. Consequently the defendants' objections fall to the ground.

There is no authority for the contention that different suits by the same plaintiff against the same defendants on different causes of action cannot be instituted.

The defendants' objection on the ground of limitation is based on Section 41 of Act VII (B.C.) of 1864, which provides that "no suit, action, or other proceeding shall be commenced against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended suit, action, or other proceeding, and of the cause thereof, nor after the expiration of three months from the accrual of the cause of suit, action, or other proceeding." It has been contended on behalf of the plaintiff that these suits are not for anything done in pursuance of this Act. The father of the defendants Nos. 1 and 2 and the other defendants executed the bonds under the rules prescribed by the Lieutenant-Governor of Bengal under Section 11 of the Act, and these suits are actions *ex contractu*, being for recovery of the amounts which the obligors promised to pay on the happening of certain contingencies mentioned in the bonds. The non-payment of the duties adjudged by the Commissioner is not an act done in pursuance of the above Act, but it is a wrong arising out of the contract entered into by the defendants, whereas the Section refers to misfeasance under the Salt Act or improper performance of lawful acts enjoined in the same. I am therefore of opinion that limitation as provided in the section does not apply.

The plaintiff took steps for the recovery of the amounts adjudged by the Commissioner under the Public Demands Recovery Act, but as there is no provision for the summary realization of the amounts in the same, the plaintiff had to withdraw the cases. Under the circumstances *res-judicata* does not certainly apply and bar the present claims.



*On the fifth point.*—The objection taken by the defendants in the 4th paragraph of their written statement as to notice is very vague. They are not entitled as of right to any notice for these suits, as I have already found Section 41 of Act VII (B.C.) of 1864 does not apply. They admit that some notices were served before. What those notices were they do not state. In answer to the 5th interrogatory delivered by the plaintiff, Raja Boikunt Nath Dey, Bahadur, has admitted service of notices. The defendants do not state that demand of the penalty duties was not made on them as provided in the bonds.

The defendants' pleaders have not been able to show any rule or circular providing allowance of wastage for more than a year.

Mr. Cornish, the Collector of the District, in answer to the interrogatories delivered by the defendants, has admitted that *darogas* on behalf of Government had a duplicate key for each *gola* or warehouse. But this fact does not absolve the obligors of the bond from their liability to pay the penal duties which they have agreed to pay under the contracts entered into by them with their eyes open.

*On the eighth point.*—The defendants do not allege in their written statements to what specific natural causes the excess wastage was due, but stated in general terms that the wastage was due to natural causes. At the trial, however, they attempted to prove that it was in consequence of certain *golas* having caught fire and of the leakage of rain-water on account of cyclones or storms. The evidence they have adduced to prove these facts is as vague as their allegations. It cannot be ascertained which *golas* caught fire and when, nor can the exact quantity of salt burnt or damaged be ascertained. On the other hand, it is evident from Mr. Cornish's further or additional answer to the interrogatories, that on the 26th February 1881, 14 warehouses at Bhudruck were burnt; that only warehouses Nos. 1, 5 and 8 had salt stored in them for the season 1879-80; and that the wastage on account of these *golas* is not the subject of these suits.

Then as to the question whether the wastage was due to storms. The evidence on this point is also very vague. There is nothing to show what quantity in each *gola* was wasted or damaged by storms. It is unnecessary to come to any finding on the second part of the 8th point, as the defendants have failed to make out that the wastage was due to causes other than from their own negligence. It is also not necessary to find whether the defendants should have provided against any wastage arising from fire or storms in the construction of their warehouses.

Then comes the question.—Was not the wastage ascertained and admitted by the defendants?

It is admitted by the defendants in their answers to the interrogatories delivered to them, that under the rules of Government it was the practice to call upon them to explain any deficiency of salt found in the warehouses at the time of clearance, and they used to submit explanations accordingly. The explanations given in connection with the wastage



which is in litigation now are not forthcoming. Under the rules of the Board of Revenue, these explanations were classed as C papers and burnt after two years. The presumption that explanations were called for and submitted is also in favor of the plaintiff, under the rule of law, providing that regular performance of judicial and official act is to be presumed—(*vide* Section 114 of the Indian Evidence Act). It has been proved that the explanations submitted by the father of Raja Boikunt Nath and Kumar Sachindra Nath and the other defendants were burnt in regular course of business. The plaintiff is therefore entitled to give secondary evidence of the admission made by the obligors—Exhibit II being the letter written by the then Collector Mr. Grant to the Commissioner, in which the former reports the amount of wastage and the purport of the explanations given by the obligors in each case. The defendants' pleaders have contended that the document is not admissible in evidence. I hold that it is relevant under Section 35 of the Evidence Act, and it is a public document, as it is the record of the acts of an executive public officer in the Salt Department—(*vide* Pirthi Singh and others *versus* the Court of Wards on behalf of Mussummat Sheo Sunduri, XXIII, Weekly Reporter, 272). This document is secondary evidence of the contents of the explanations submitted by the obligors of the bonds. Under the provisions of Section 65 of the Evidence Act, any secondary evidence of the contents of documents which have been destroyed or lost is admissible. Exhibit II shows that the obligors did not object to the quantity found deficient in each *gola*, and offered their reasons for the deficiency. The Commissioner, on the authority of the reports made by the Collector, sanctioned the levy of the penalty duties which form the subject-matter of these suits.

It is here necessary to state that the Government pleader offered to prove the signatures of the Collector and the Commissioner in the reports, and the letters of the latter sanctioning the levy of penalty duties. But I did not allow him to do so, as the Court is bound to take judicial notice of the signatures of Gazetted Officers—(Section 57, Clause 7 of the Evidence Act).

For the above reasons I find the 9th point against the defendants.

It has been proved and admitted by the Collector that Liverpool salt was imported in this Province at the time when the defendants were manufacturing and selling Panga salt in terms of their licenses. The introduction of the salt might have interfered with the sale of the salt stored in the defendants' warehouses. Can the defendants, under such circumstances, legally claim exemption from payment of the penalty duties on account of the excess wastage found in their warehouses? The question resolves itself into the following:—Should Government have disallowed the Liverpool merchants to import salt in this Province? Government could not legally do that. The obligors could not have compelled Government to enter into an agreement to that effect, and there is no such agreement even if it had been legal. The defendants cannot now take objection to their liability on that score.

how was this settled  
to Dept?



Apart from the above considerations, I hold, on the principle laid down in *Aghore Nath Banerji versus the Calcutta Tramways Company, Limited*, Indian Law Reports, XI, Calcutta, 232, that the Commissioner's finding is conclusive against the defendants, as they have bound themselves to abide by his decision. I at first doubted whether the adjudgment by the Commissioner in the absence of the defendants would be binding on them. But it appears that the Commissioner acted upon the report of the Collector embodying the explanations submitted by them. It must be presumed that the Commissioner, after considering the reasons submitted, adjudged the penalty duty in each case. If the Collector had not taken explanations from the bonders, and incorporated them in his reports, and if the Commissioner had adjudged the duties upon such one-sided reports, the adjudgment would have been illegal.

I do not see any reason to disallow the interest stipulated in the bonds.

Another objection not taken in the written statement was raised by the defendants at the trial. They urged that under the proviso in Section 11 of Act VII (B.C.) of 1864 no penalty shall exceed Rs. 500. But that provision does not apply here. The penalty provided for in that Section refers to penalties for infringement of the rules prescribed by the Lieutenant-Governor of Bengal under that section. The penalty duties in litigation arise out of the contracts entered into by the bonders with the plaintiff. They are in reality liquidated damages for loss of duty which Government would have sustained on the excess wastage, if there would have (been) no such agreement.

For the above reasons I decree the suits with costs and interest at 6 per cent.

KHETTER MOHUN MITTER,  
*Munsiff.*

*The 3rd June 1889.*

IV.—*Decision of Babu Bulloram Mullick, Subordinate Judge of Cuttack, dated the 8th March 1890.*

APPEALS NOS. 85 TO 101 OF 1889.

Appeal from the decision of Babu Khetter Mohun Mitter, Roy Bahadur, Munsiff of Balasore, in Original Suits Nos 1354 to 1370 of 1888, dated 3rd June 1889.

Raja Boikunt Nath Dey, Bahadur, and others, defendants,  
*Appellants,*

*versus*

The Secretary of State for India in Council, plaintiff,  
*Respondent.*

*For Appellants*—Mr. S. C. Biswas, Babus Ramgoti Gupta and Lal Behari Ghose, pleaders.

*For Respondent*—Babu Huribullab Bose, Government pleader.



It is admitted that all these appeals will be governed by the one and same judgment. The judgment of the Lower Court gives a resumé of the allegations and pleas of both parties, and I do not think it necessary to recapitulate them here.

The decrees passed by the Court below are assailed on certain grounds, out of which the following are only pressed by the learned counsel on behalf of the appellants.

The first is that in the absence of any evidence to prove the bonds relied upon by the respondent, the Lower Court should have thrown out the suits. I find that in the written statements filed by the appellants they did not deny the bonds, and the point does not appear to have been pressed before the Munsiff at the trial. On each bond the Lower Court's endorsement is admitted by defendants or admitted in evidence, and I am compelled to infer that the bonds had not been the *facta probanda* in the Court below. This ground accordingly fails, and I do not think that Section 117, Civil Code Procedure, gives the appellants any help.

The second ground is that the Lower Court erred in law in deciding the ninth issue in favor of the respondent. That issue turns upon the true meaning of a covenant in the bonds which runs thus:—And that we will discharge without objection within 15 days of the issue of the Commissioner's orders any duty that may be adjudged against us by the Commissioner of Orissa on account of any excess or penalty duty in consequence of any deficiency, &c. Appellants' contention is that the question of deficiency or no deficiency is an open question in this Court, and this Court has power to re-adjudge the matter of penalty duty which has been set at rest by the Commissioner. It seems to me that the covenant in the bond is conclusive on the point. I see no reason why the appellants should not be bound by their own act and deed. The word 'adjudged', used in the bond, does not imply an adjudication as contemplated by the Civil Procedure Code. If it had been the bonders' intention to have an adjudication of that sort, they should have got a clause inserted to that effect in the instruments. But the covenant in regard to the power of the Commissioner to adjudge is unreserved and unequivocal. It was not the appellants' case in the Lower Court that the instrument was unconscionable in its character. Rule 21 issued by the Government of Bengal defines the powers of the Commissioner in that respect, and I consider his orders to be conclusive under the law as laid down in Section 11, Bengal Act VII of 1864.

It is needless for me to determine whether the legal status of the Commissioner was that of an arbitrator within the meaning of the Civil Procedure Code, and I am not called upon to decide whether he should have adjudged the matter in dispute as an arbitrator should. Hence the cases which bear upon the true import of Section 28, Indian Contract Act, and the procedure which an arbitrator should adopt are wholly inapplicable.

We are told that the Commissioner did not sign the order adjudging the matter in all the cases. I find from the original letters filed in this Court that each order bears his signature. This ground fails also.



The next ground relates to interest. It was not taken in the Court below, and being a mixed question of law and fact, it cannot be taken here for the first time.

I consider paragraph 9 of the written statement to be materially different from the ground now taken. If we admit that ground, the result would be to order an enquiry into certain additional facts.

The decrees of the Lower Court are substantially correct, and the appeals should be dismissed with costs. Interest at 6 per cent.

BULLORAM MULLICK,  
*Subordinate Judge.*

*V.—Memorandum of Appeal from Appellate Decree, filed on the 26th June 1890.*

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BEN-  
GAL, IN ITS APPELLATE JURISDICTION,

Boikunt Nath Dey,  
Sachindra Nath Dey,  
Umesh Chunder Mondul,  
Mathura Mohun Parhi,  
Bhogoban Chunder Das.  
*By their vakeel*  
Boikunt Nath Pal.

The Secretary of State for India in Council, . . . *Plaintiff,*  
*versus*

No. 1, Raja Boikunt Nath Dey, Bahadur, No. 2, Sachindra Nath Dey, both of Rajnagar, Purgana Sunhat; No. 3, Umesh Chunder Mondul, No. 4, Madan Mohun Das, both of Barbati, Purgana Sunhat; No. 5, Mathura Mohun Parhi, of Iram, Purgana Ankura, in the District of Balasore, . . . . . *Defendants.*

Defendant No. 4 having died during the pendency of the appeal in the Court of the Subordinate Judge of Cuttack, by order, dated the 20th February 1890, No. 1, Bhogoban Chunder Das, No. 2, Kunjo Behari Das and No. 3, Bon Behari Das, majors, and No. 4, Gagan Chunder Das, No. 5, Satish Chunder Das, minors, by their mother and next friend Srimoti Taramoni Dasi, the sons and heirs of the said Madan Mohan Das, deceased, defendant No. 4, were made defendants, appellants.

Claim for penalty duty on excess wastage of salt with interest, laid at Rs. 567-1-2.

Raja Boikunt Nath Dey, Sachindra Nath Dey, Umesh Chunder Mondul, Mathura Mohun Parhi and Bhogoban Chunder Das (son of Madan Mohun Das, deceased), defendants abovenamed, appeal to the Honorable High Court from the appellate decree and judgment of the Subordinate Judge of Cuttack, dated the 8th March 1890, confirming the decree and judgment of the Munsiff of Balasore, bearing date the 3rd



day of June 1889, against the plaintiff, respondent, for the following amongst other grounds:—

*First.*—For that the Lower Courts should have held that in the absence of an adjudication by the Commissioner of Orissa, there was no amount due to the plaintiff and no cause of action against defendants.

*Second.*—For that the Lower Courts have erred in law in refusing to enter into the merits of the claim for penalty duty, and in so doing, have refused to exercise jurisdiction vested in them to adjudicate a point of dispute between the parties.

*Third.*—For that the Lower Courts have erroneously held that there was an adjudication by the Commissioner of Orissa. They should have held that he did not adjudge the point as to whether penalty was to be levied at the penal rate, and whether defendants were at all liable under the circumstances to pay any further sum to the plaintiff.

*Fourth.*—For that the Lower Courts should have treated the letters of the Personal Assistant, and in some cases those of the Commissioner, as *ex-parte* orders or sanctions to levy the penalty duty, as recommended by Mr. Grant, Collector of Balasore, and should have held that those letters were not legally binding and conclusive between the parties. The original letters of the Commissioner received in the Appellate Court were drafts kept in his office, and could not be treated as orders issued by him.

*Fifth.*—For that there was no evidence as to the amount of excess wastage or deficiency, and the Lower Courts were wrong in law in holding that there was an admission of defendants as to the amount of excess wastage or deficiency. Defendants did not admit the amount of deficiency in their explanations, nor did they admit that their explanations were burnt or destroyed, and it was not proved by legal evidence that the explanations were actually destroyed or burnt.

*Sixth.*—For that the Courts below should not have received the report of Mr. Grant, Collector, as secondary evidence or any evidence of the contents of the explanation of defendants.

*Seventh.*—For that the Lower Courts have failed to consider the admission of Mr. Cornish, Collector of Balasore, that the wastage was natural, not criminal; that the dryage was due to delay in sale caused by the act of plaintiff in allowing Liverpool salt to be imported there; that some of the warehouses had been destroyed by fire and a storm, and heavy rains had blown down some *golas* and washed away salt stored therein, and that one set of keys of the warehouses remained always with the Government salt daroga.

*Eighth.*—For that the Lower Courts should have taken into consideration the admitted and prevailing practice of allowing more wastage and dryage than the stipulated rate of  $2\frac{1}{2}$  per cent., whenever such was caused by natural causes or causes over which the licensees have no control.

*Ninth.*—For that the Lower Courts should not have allowed interest.



*List of Papers.*

Memorandum of Appeal.  
Decree of the Munsiff.  
Decree of the Subordinate  
Judge.  
Vakalutnama.  
Judgment of the Munsiff.  
Judgment of the Subordi-  
nate Judge.

We, Taruk Nath Paulit and  
Boikunt Nath Pal, pleaders  
for the abovenamed appellants,  
do hereby certify that each of  
the grounds of appeal set forth  
in the above petition, presented  
by us on behalf of the said ap-  
pellants, is a good ground of  
Appeal from Appellate Decree.  
Dated this the 26th day of  
June 1890.

BOIKUNT NATH PAL,  
TARUK NATH PAULIT,  
*Vakeels.*

*For Appellant*—Babu Boikunt Nath Pal.

Let this appeal and the analogous Second Appeals Nos.  
735 to 737 of 1890 be admitted, and the usual notice be  
issued.

Let one set of paper-books be prepared in these cases, and  
let two sets of tullubana be received.

W. MACPHERSON.  
GOOROO DAS BANERJI.

*The 1st July 1890.*

## MEMO.

*In the matter of*

APPEALS FROM APPELLATE DECREES NOS. 733, 735 TO  
737 OF 1890.

Raja Boikunt Nath Dey and others, . . . *Appellants,*  
*versus*  
The Secretary of State for India . . . *Respondent.*

In making the printed paper-book in the above cases,  
which according to the order of the Court would be one set  
only, the following papers ought to be printed in addition to  
the usual pleadings, judgments, &c., viz :—

1. Interrogatories and answers of Mr. R. Cornish, Col-  
lector of Balasore, dated 24th April 1889 (in English).

2. Bond in English of Raja Shamanund Dey and others  
in favor of the Secretary of State for India, dated 30th  
November 1881.

3. Letter (English) from the Collector of Balasore to the  
Commissioner of Revenue, Orissa Division, Cuttack, No. 85,  
dated 18th March 1884.

Memo. No. 179 from Commissioner's Office, Orissa Divi-  
sion, to the Collector of Balasore, dated 8th April 1884.

*Note.*—On arrival of records, similar memos. or letters in  
each case will be pointed out. Please give us notice when  
the records arrive to enable us to point out the papers.

BOIKUNT NATH PAL,  
TARUK NATH PAULIT,  
*Vakeels for Appellants.*

*The 16th July 1890.*



INCLUDED IN THE PAPER-BOOK AT THE REQUEST OF THE APPELLANT UNDER THE NEW RULE (C1) OF THE RULES FOR THE PREPARATION OF PAPER-BOOKS IN SECOND APPEALS.

*VI.—Interrogatories and answers of Mr. R. Cornish, Collector of Balasore, dated the 24th April 1889 (in English) with the affidavit of 6th May 1889.*

Affidavit to be filed in the Civil Court.

Secretary of State for India *versus* Raja Boikunt Nath Dey Bahadur, and others.

*Defendants' Interrogatories.*

*Plaintiff's Answers.*

1. In what year the Liverpool salt was first imported to this Province?

In the year 1882-83 Liverpool salt seems to have first been regularly imported from Calcutta.

Whether before its import Panga salt was the only salt being sold or not?

Both Panga and Karkatch were sold.

Since the import of Liverpool salt up to 1885, what was the quantity of the Liverpool and Panga salt respectively sold?

Liverpool 70,669 maunds, Panga 5,45,086 maunds were sold till the end of 1885-86, so far as I can ascertain.

2. Whether one key of the gola in which the salt was stored used to remain with the daroga on behalf of Government and the other key with the agent of the contractors?

Yes.

3. Whether the golas were examined by Government officials before the storage of salt therein as to their being fit place for storage?

Yes.

4. Whether after the storage of salt it used to be examined by Government officials, who were to report the result of their inspection?

As a matter of official routine, the golas should have been so examined. I can find no reports of such inspections.

5. Whether those officers had authority to weigh the salt if any suspicion arose as to its being deficit or in excess?

Yes.

6. Whether the salt of the golas connected with these suits was ever weighed by any such officer on suspicion of being deficit or in excess?

I can find no record of any such weighing.

7. Whether the darogas in regard to their liabilities executed security bond in favor of Government; and

Yes.



Whether without the presence of the daroga any person could take out at any time any salt from the *golas*?

No, not if the rules were strictly observed.

8. What account, if any, did the daroga and other officials of Salt Department give regarding the excess deficiency of salt claimed in these suits?

I cannot find that they gave or were suspected to give any such account.

9. Whether the salt sold at Bhuddruck *golas* in the years claimed was damaged by the *golas* having caught fire?

Once the Bhuddruck *golas* caught fire, but in what year cannot be ascertained without delay.

10. Whether the wastage claimed for the years accrued during the time of Mr. Grant, and whether he specially reported that the manufacture of Panga salt may be stopped?

The wastage accrued mainly during Mr. Grant's incumbency. I can find no published official record regarding this. I am estopped from further reply by Section 123 of the Evidence Act.

11. Whether the salt was stored during the rainy season or not?

This question is not quite intelligible. Salt (as I understand) was generally stored in dry season, but remained in *gola* throughout the year.

12. Whether the *gola* darogas were equally responsible with the defendants for the due care and misappropriation of the salt?

They would have been held responsible for misappropriation; not for due care as regards wastage.

13. Whether any officer ever reported that the wastage claimed was due to some cause other than natural cause?

No such report is forthcoming.

14. What is the probable wastage per cent. of salt if it is stored for a period exceeding one year?

Cannot say, must depend greatly on care taken by contractors to keep *golas* in proper repair.

15. Whether the former Collector, Mr. Beadon, with a view to test the percentage wastage of salt, did bring salt of Parnanpanta Arang of Urdhab Churn Pothal, contractor, and stored the same within the compound of the Collectorate, and whether the same having been stored for only 11 months, the wastage exceeded 4 per cent?

I can find no published official record of this.

16. Whether Urdhab Churn Pothal was allowed the dryage percentage at that rate?

I believe he was, but have not yet been able to discover the papers connected with his case.



17. Whether for periods prior or subsequent to those for which the cases and for similar dryage for which the cases are, remissions were made to the defendants as also to other contractors of the penalty duty over and above the authorized wastage of  $2\frac{1}{2}$  maunds? Yes, in special cases as a matter of grace on sufficient grounds being shewn.

I, Robert Cornish, Esq., Collector of Balasore, on behalf of the Secretary of State for India, being present in the Court of Mr. Mendes, Deputy Magistrate of Balasore, do hereby declare that what is stated herein is true to the best of my information and belief.

ROBERT CORNISH,  
*Collector of Balasore.*

*The 24th April 1889.*

Sworn in my presence this 24th day of April 1889.

T. MENDES,  
*Deputy Magistrate of Balasore.*

Affidavit to be filed in the Civil Court.

Secretary of State for India *versus* Raja Boikunt Nath Dey, Bahadur, and others.

*Defendants' Interrogatory*  
No. 9.

Whether the salt stored at Bhuddruck gola in the years claimed was damaged by *golas* having caught fire?

*Plaintiff's Answer.*

On the morning of the 26th February 1881, 14 *gola* houses at Bhuddruck were burnt by fire. Only the *golas* Nos. 1, 5 and 8 had salt in them of the season 1879-80. The wastage on account of these *golas* is not in litigation now.

I, Robert Cornish, Esq., Collector of Balasore, on behalf of the Secretary of State for India, being present in the Court of Mr. Mendes, Deputy Magistrate of Balasore, do hereby declare that what is stated herein is true to the best of my information and belief.

ROBERT CORNISH,  
*Collector of Balasore.*

*The 6th May 1889.*

Sworn before me this 6th day of May 1889.

T. MENDES,  
*Deputy Magistrate of Balasore.*



*VII.—Bond (in English) of Raja Shamanund Dey and others in favor of the Secretary of State for India, dated the 30th November 1881.*

We, Raja Shamanund Dey, Umesh Chunder Mondul, Madan Mohun Das and Mathura Mohun Parhi, of Balasore, and salt licensees of Arang Balisahi, having obtained permission from the Collector of Balasore to store, without previous payment of duty, in the warehouse at Kuligram No. 1 for a period of 36 months (5,366-20) maunds of salt manufactured under excise license No. 37, dated the 28th December 1880, do hereby jointly and severally for ourselves, our heirs and representatives covenant with the Secretary of State for India that we will faithfully observe the provisions of Act VII (B.C.) of 1864 and the rules prescribed by the Lieutenant-Governor of Bengal in accordance with Sections 11 and 13 of that Act to be observed by persons obtaining permission to warehouse salt under the provisions thereof, and that in the event of our failing to manufacture a sufficient quantity of salt to yield a revenue equal to twenty times the cost of the Preventive Establishment, we will pay to the Collector on demand such sum as he may require on account of the cost of the said establishment, and on failure of payment by us, we authorize the Collector to realize the amount by sale at public auction of our salt stored in the warehouse, and further that we will at all times, when required by the officer in charge of the said warehouse, produce the key of the said warehouse, and afford to such officers or to such other person or persons as the Collector may direct, free ingress to such warehouse, in order that such officers or persons may weigh and examine the said salt, and if on such weighment and examination there shall be any deficiency (beyond the authorized allowance), we will within such period of time as the Collector may order, pay the duty on the quantity so deficient, and further that we will pay to the Board of Revenue, Lower Provinces of the Presidency of Fort William in Bengal, within 156 weeks from the date of this bond, or within such further time as the said Board of Revenue shall in writing allow on that behalf, all dues whether of excise duty, warehouse dues, and other lawful charges which shall be demandable in respect of the said salt, and that we will discharge without objection, within 15 days of the issue of the Commissioner's orders, any duty that may be adjudged against us by the Commissioner of Orissa on account of any excess or penalty duty in consequence of any deficiency (beyond the usual allowance of 2½ per cent. as wastage) of salt found in the said warehouse at the time of clearance, together with interest on every such sum at the rate of 6 per cent. per annum from the date of demand of the said sum being made in writing by the said officer in charge of the said warehouse. And in case we fail to observe the above or any of the above conditions, we hereby jointly and severally bind ourselves, our heirs and representatives and each of them to pay to the said Secretary of State for India the sum of Rs. 14,087-1 as liquidated damages for the breach of any of the above conditions, and we further authorize the said Secretary of State for India, while reserving all rights



under this bond, to hold such salt as a security for the payment of such sums as may be adjudged to be due from us, and to sell such salt for the realization of the same, and in case we fail to produce when required the keys of the said warehouse, we further authorize the officer in charge of the said warehouse to force open the door of the said warehouse and to examine and weigh the salt in our absence, after giving to us or our agents one day's notice of his intention, or in case neither we nor our agents are present on the spot, after affixing such notice for one day to the warehouse door, and in case such weighing prove the existence of any deficiency in excess of authorized wastage, we will pay the duty on the quantity deficient within such time as the Collector may direct.

In witness whereof we hereby affix our signatures to the above bond, this 30th day of November 1881.

*Witnesses.*

(Illegible.)

(Illegible.)

শ্রী গজেন্দ্র চন্দ্র মোক্তার আম ভঃ

শ্রী রাজা শ্যামানন্দ দেও,

উমেশ চন্দ্র মণ্ডল ও

মদন মোহন দাস ও

মথুরা মোহন পাড়ী

Signed in my presence this 30th day of November 1881.

SHITAL NATH BOSE,

*Deputy Collector, in charge salt.*

*VIII.—Letter (English) from the Collector of Balasore to the Commissioner of Revenue, Orissa Division, Cuttack, No. 85, dated 18th March 1884.*

BALASORE COLLECTORATE, SALT DEPARTMENT.

No. 85.

From

THE COLLECTOR OF BALASORE,

To

THE COMMISSIONER OF REVENUE, ORISSA  
DIVISION, CUTTACK.

SIR,

I have the honor, with reference to the extract reproduced in the margin from this office Return No. IV B, for the month of February 1884, to report the clearance of excise salt of Arang Balisahi manufactured during the season 1880-81 and stored

*Extract from Return No. IV B. for month of February 1884.*

1	2	3	4	5
Year of the manufacture as in column 1.	Name of arang as in column 1.	Quantity of salt stored in the warehouse as in column 10.	Quantity of salt sold as in column 13.	Balance as in column 14.
		Mds. S.	Mds. S.	Mds. S.
1880-81	Balisahi.	5,366 20	4,892 0	484 20



in Kuligram warehouse No. 1. The *gola* account stood thus:—

Quantity of salt stored	.	.	.	.	5,368	20	0
Ditto sold	.	.	.	.	4,882	0	0
				Deficiency	484	20	0
Authorized wastage at $2\frac{1}{2}$ per cent.	.	.	.	.	134	6	8
				Excess deficiency	350	13	8

2. The bonders explain that the salt met with rain on its transit from Arang to *gola*, and wet salt was stored in the *gola*; the *gola* stands on the bed of the river; the salt took over three years to be sold, and the thatch of the *gola* was accidentally blown away by heavy wind in March 1883, corresponding to Falgun 1290.

3. The salt was stored in the *gola* from the 18th May 1881 to 26th June 1881. The sale commenced on the 10th July 1882, and the *gola* was cleared on the 20th February 1883.

4. Remission in consideration of the salt being wet was granted at the time, *vide* transit deficiency report for 1880-81. The plea of the salt being sold over three years is unsatisfactory; for it is due to the negligence of the bonders. Had the *gola* thatches been strongly built, the accident referred to would not have occurred. I cannot therefore allow any remission, and I recommend that full penalty duty on the excess deficiency, *viz.*, 350 maunds-13 seers-8 chittaks, at Rs. 2 per maund, amounting to Rs. 701, be levied.

5. It is stipulated in the bond that the penalty duty is to be adjudged by you.

I have, &c.,

S. GRANT,

Collector.

*IX.—Memorandum No. 179 from Commissioner's Office, Orissa Division, to the Collector of Balasore, dated the 8th April 1884.*

Memorandum No. 179.

COMMISSIONER'S OFFICE, ORISSA DIVISION, CUTTACK.

To

THE COLLECTOR OF BALASORE.

*The 8th April 1884.*

Your No. 85 of the 18th ultimo.

I sanction the levy of penalty duty, amounting to Rs. 701, on the excess deficiency of 350 maunds-13 seers-8 chittaks of salt found at clearance of Kuligram warehouse No. 1, at the rate of Rs. 2 per maund.

JUGO MOHUN ROY,  
Personal Assistant, for Commissioner.

*the salt account  
in Culigram*



## APPENDIX.

*Plaint, filed on the 19th November 1888.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1360 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,**versus*

No. 1, Raja Boikunt Nath Dey, Bahadur, aged at about 39 years, No. 2, Sachindra Nath Dey, aged at about 23 years, sons of Raja Shamanund Dey, Bahadur, deceased, by caste Tambulis, by profession zemindars, &c., inhabitants of Rajnagar, Purgana Sunhat; No. 3, Umesh Chunder Mondul, aged at about 42 years, son of Puddolochan Mondul, deceased, by caste Barnik, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 4, Madan Mohan Das, aged at about 53 years, son of Urdhab Churn Das, deceased, by caste Kabir, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 5, Mathura Mohun Parhi, aged at about 40 years, son of Shama Churn Parhi, by caste Brahmin, by profession zemindar, &c., inhabitant of Iram, Purgana Ankura, in the Munsiffi of Jajpur,

*Defendants.*

The plaintiff abovenamed states as follows:—

Paragraphs 1 to 6 are substantially similar to those of the plaint in case No. 733 of 1890.

7. The plaintiff prays—

- (a) That a decree may be given in favor of the plaintiff against the defendants for Rs. 762-11 with interest under claim on account of duty on unauthorized deficiency of salt as wastage, as well as future interest and costs of the suit.

*Account.*

	M.	S.	C.
Salt manufactured at Bedzipur Arang and stored in gola No. 5 at Bhuddruck . . . . .	7,288	0	0
Sold . . . . .	6,803	7	0
Balance . . . . .	484	33	0
Deduct out of the balance authorized wastage, at the rate of 2 maunds, 20 seers per hundred maunds . . . . .	182	8	0
The remainder which unauthorized . . . . .	302	25	0
	Rs. A. P.		
Duty on the above, at the rate of Rs. 2 per maund . . . . .	605	8	0
Interest of the same for 4 years, 3 months, 27 days, from 9th July 1884 to 6th November 1888, at the rate of 8 annas per cent. per month . . . . .	157	3	0
TOTAL . . . . .	762	11	0

*The 2nd November 1888.*

Verification similar to that in case No. 733 of 1890.



*Written Statement of Raja Boikunt Nath Dey, Bahadur, Sachindra Nath Dey, Umesh Chunder Mondul, Madan Mohun Das and Mathura Mohun Parhi, defendants Nos. 1 to 5, filed on the 27th November 1889.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1360 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*

*versus*

Raja Boikunt Nath Dey, Bahadur, and others, *Defendants.*

The defendants abovenamed state as follows:—

Paragraphs 1 to 11 are similar to those of the written statement in case No. 733 of 1890.

Verification similar to that in the above case.

*Plaint, filed on the 19th November 1888.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1357 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*

*versus*

No. 1, Raja Boikunt Nath Dey, Bahadur, aged at about 39 years, No. 2, Sachindra Nath Dey, aged at about 23 years, sons of Raja Shamanund Dey, Bahadur, deceased, by caste Tambulis, by profession zemindars, &c., inhabitants of Rajnagar, Purgana Sunhat; No. 3, Umesh Chunder Mondul, aged at about 42 years, son of Puddo-lochun Mondul, deceased, by caste Barnik, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 4, Madan Mohun Das, aged at about 53 years, son of Urdhab Churn Das, deceased, by caste Kabir, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 5, Mathura Mohun Parhi, aged about 40 years, son of Shama Churn Parhi, deceased, by caste Brahmin, by profession zemindar, &c., inhabitant of Iram, Purgana Ankura, in the Munsiff of Jajpur, *Defendants.*

The plainti abovenamed states as follows:—

Paragraphs 1 to 6 are substantially similar to those of the plaint in case No. 733 of 1890.

7. The plaintiff prays—

(a) That a decree may be passed in favor of the plaintiff against the defendants for Rs. 891-10-4 pie with interest under claim on account of duty on unauthorized deficiency of salt as wastage, as well as future interest and cost of the suit.



*Account.*

	M. S. C.
Salt manufactured at Balisahi Arang and stored in gola No. 1 at Kuligram . . . . .	5,366 20 0
Sold . . . . .	4,882 0 0
Balance . . . . .	484 20 0
Deduct out of the balance authorized wastage, at the rate of 2 maunds-20 seers per hundred maunds . . . . .	134 6 8
The remainder which is unauthorized deficiency	350 13 8
	<hr/>
	Rs. A. P.
Duty on the above at the rate of Rs. 2 per maund . . . . .	701 0 0
Interest of the same for 4 years, 6 months, 17 days, from 19th April 1884 to 6th November 1888, at 8 annas per cent. per month . . . . .	190 10 4
TOTAL . . . . .	891 10 4

*The 2nd November 1888.*

Verification similar to that in case No. 733 of 1890.

*Written Statement of Raja Boikunt Nath Dey, Bahadur, Sachindra Nath Dey, Umesh Chunder Mondul, Madan Mohun Das and Mathura Mohun Parhi, defendants Nos. 1 to 5, filed on the 27th February 1889.*

IN THE COURT OF THE MUNSIF OF BALASORE.

SUIT No. 1357 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*

*versus*

Raja Boikunt Nath Dey and others, . . . *Defendants.*

The defendants abovenamed state as follows :—

Paragraphs 1 to 11 are similar to those of the written statement in case No. 733 of 1890.

Verification similar to that in the above case.

*Plaint, filed on the 19th November 1888.*

IN THE COURT OF THE MUNSIF OF BALASORE.

SUIT No. 1367 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*

*versus*

No. 1, Raja Boikunt Nath Dey, Bahadur, aged at about 39  
733

G

733/1890-47



years, No. 2, Sachindra Nath Dey, aged at about 23 years, sons of Raja Shamanund Dey, Bahadur, deceased, by caste Tambulis, by profession zemindars, &c., inhabitants of Rajnagar, Purgana Sunhat; No. 3, Umesh Chunder Mondul, aged at about 42 years, son of Puddolochun Mondul, deceased, by caste Barnik, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 4, Madan Mohun Das, aged at about 53 years, son of Urdhab Churn Das, deceased, by caste Kabir, by profession zemindar, &c., inhabitant of Barbati, Purgana Sunhat; No. 5, Mathura Mohun Parhi, aged at about 40 years, son of Shama Churn Parhi, deceased, by caste Brahmin, by profession zemindar, &c., inhabitant of Iram, Purgana Ankura, in the Munsiff of Jajpur,

*Defendants.*

The plaintiff abovenamed states as follows :—

Paragraphs 1 to 6 are substantially similar to those of the plaint in case No. 733 of 1890.

7. The plaintiff prays—

- (a) That a decree may be given in favor of the plaintiff against the defendants for Rs. 693-2-10 pie with interest under claim on account of duty on unauthorized deficiency of salt as wastage, as well as future interest and cost of the suit.

*Account.*

	M.	S.	C.
Salt manufactured at Balasore Arang and stored in gola No. 1 at Chandbali	5,040	6	11
Sold	4,842	0	0
Balsuce	398	6	11
Deduct out of the balance authorized wastage at the rate of 2 maunds-20 seers per hundred maunds	126	0	8
The remainder which is unauthorized wastage	272	6	8
	Rs.	A.	P.
Duty on the above at the rate of Rs. 2 per maund	544	8	0
Interest of the same for 4 years, 6 months, 17 days, from 19th April 1884 to 6th November 1888, at 8 annas per cent. per month	148	10	10
<b>TOTAL</b>	<b>693</b>	<b>2</b>	<b>10</b>

*The 2nd November 1888.*

Verification similar to that in case No. 733 of 1890.



*Written Statement of Raja Boikunt Nath Dey, Bahadur,  
Sachindra Nath Dey, Umesh Chunder Mondul, Madan  
Mohun Das and Mathura Mohun Parhi, defendants  
Nos. 1 to 5, filed on the 27th February 1889.*

IN THE COURT OF THE MUNSIFF OF BALASORE.

SUIT No. 1367 OF 1888.

The Secretary of State for India in Council, . *Plaintiff,*

*versus*

Raja Boikunt Nath Dey, Bahadur, and others. *Defendants.*

The defendants abovenamed state as follows :—

Paragraphs 1 to 11 are similar to those of the written statement in case No. 733 of 1890.

Verification similar to that in the above case.

*Pleadings translated by—Marfadal Huq, Extra Tr.*

*Proofs compared by—J. Ainslie.*

The decisions of the Lower Courts are in English.