

# ALLAHABAD HIGH COURT

Devi Prasad Sri Krishna Prasad

Vs

Secretary of State

(Bajpai, J.)

29.08.1941

## JUDGMENT

### **Bajpai, J.**

1. This is an appeal against the judgment and decree of the Civil Judge of Dehra Dun dated 26th March 1935, by which the plaintiffs' claim for recovery of a sum of money was dismissed. Plaintiff 1, Devi Prasad Sri Krishna Prasad, Ltd, of Delhi is a limited liability company which was incorporated on 4th September 1931, with the object inter alia 'to enter into a contract of sale of forest produce with the Forests Officer, western circle.' Plaintiff 2 firm Devi Prasad Sri Krishna Prasad is a firm of Government Contractors in Delhi. The defendant is the Secretary of State for India in Council. On 21st May 1931, a sum of Rs. 25,000 was deposited by plaintiff 2 with Mr. V. A. Herbert, Conservator of Forests of the western circle who was-acting in the transaction on behalf of the defendant as security money for performance of a contract of lease and sale of forest produce. The plaintiffs, alleging that the contract for the performance of which the said sum was deposited remained incomplete and as the said sum of money was paid to plaintiff 2 by plaintiff 1, raised an action on 9th March 1933, in the Court of the Civil Judge of Dehra Dun for recovery of the said sum with interest due on it against the defendant. The trial Judge finding that the contract for the performance of which the said sum was deposited having been concluded between the parties and the plaintiffs being in default in not completing the bargain dismissed the claim and against the said dismissal the plaintiffs have made this appeal and the main controversy which arises in the case is whether the deposit was made in the midst of the negotiations for contract or at the conclusion of the contract.

2. The western circle of the Forest Department of the U.P. Government grows a large quantity of bhabar or baib grass which is suitable for manufacturing paper. The Conservator of Forest, western circle, is authorised on behalf of the Government to sell the grass and other forest produce and to enter into contracts with regard to it on behalf of the defendant. Prior to the year 1931 a lease and sale of grass and forest produce in western circle was executed by the defendant in favour of Beilgerow & Co. a firm of paper manufacturers in Calcutta. This contract had come to an end or was about to come to an end in 1931 when Mr. V. A. Herbert the Conservator of Forests by a notice dated 10th April 1931, invited tenders for a fresh lease of the bhabar or baib grass for any number of years upto ten. It was stated in the notice that:  
The maximum yield of grass in any one year under the last lease was approximately 4,50,000

maunds. This could probably be largely increased, but commercial outturn is dependent on cost of extraction.

3. It was further stated in the notice that: Exact terms of contract will be subject to settlement with the undersigned later, but approximate terms of contract can be ascertained before submission of tenders.

4. The tenders were to reach the Divisional Forest officer, DehraDun, before 12 noon on 10th April 1931. On 8th April 1931, plaintiff 2 submitted a tender for the lease and sale of the said grass and it offered to take the lease for a period of ten years on payment of "royalty" of Hs. 90,000 per year for the said lease in two equal instalments. The tender further stated that plaintiff 2 was 'prepared to agree to any reasonable terms to be finally settled between you and us for the working of the forest.' This tender submitted by plaintiff 2 did not reach in time and there were also other reasons, as a result of which the Conservator of Forests decided to invite fresh tenders up to 30th April 1931, 12 noon. On 10th April 1931, Mr. Herbert invited the plaintiff to submit a fresh tender and in doing so he stated as follows: With regard to terms, I enclose a copy of the terms of the last lease. Individual terms might be subject to modification, but the general terms would have to be on these lines. If you do submit a fresh tender by 30th April 1931, your tender should include the amount of security which you are willing to deposit. As this circle has, as far as I know, never yet had any business dealings with you. I think the amount of security which you should offer should be one year's royalty, which could of course be in some form of security which paid interest, but it would have to be in some form which was entirely at my disposal, if necessary.

5. The copy of the last lease which Mr. Herbert had enclosed with his letter dated 10th April 1931 is printed on p. 129 of the record and it gives full information as to the terms upon which the last lease was granted and it was in contemplation to grant a future lease. On 29th April 1931, plaintiff 2 submitted a fresh tender in which he offered to pay a royalty of Rs. 1,00,000 a year and agreed to take lease for ten years and he further stated as follows: Terms. - That we have noted that the general terms of the lease shall be on the lines of the last lease, a copy of which you have kindly sent to us, but they are subject to modification later on. In this connection we may point out that we are prepared to agree to any reasonable terms to be finally settled between you and us for the working of the said forest. Security. - That we are willing to deposit any amount to the extent of the royalty offered by us annually which may be mutually agreed upon acceptance of our tender by you.

6. On 9th May 1931, by a letter Ex. 4 which is printed on p. 12Y of the record, Mr. Herbert accepted the plaintiffs' tender for a lease of ten years on a royalty of Rupees 1,00,000 subject to deposit of a security of Rs. 1,00,000. This letter further states:

When I saw your Mr. A.J. Kanedar on the first instant he told me that if your tender was accepted, you would at once deposit security and send an authorized representative to settle final details of the contract with me. Will you, therefore, kindly do Ibis at once?

7. On 12th May 1931, a meeting took place at Dehra Dun in which four partners of the firm of plaintiff 2, viz. Alopi Prasad, Kishori Saran, Jwala Prasad and Devi Prasad were present and so was Mr. V.A. Herbert, the Conservator of Forests. At this meeting the terms of the contract of lease and sale which was the subject-matter of the tender and correspondence mentioned above

were discussed and settled and primarily the negotiations were between the Conservator of Forests, Mr. Herbert on one side and the four partners of plaintiff 2 on the other side; but Mr. Canning, the Chief Conservator of Forests, was also present in the house where the meeting took place and at the conclusion of the meeting the four partners were introduced to him and Mr. Canning was informed that the partners were the people who had taken the contract and of its terms generally. With regard to what was settled in this meeting and what remained to be settled there is a sharp controversy between the parties. Mr. Herbert's version is that the commodity to be sold and the price for which it was to be sold had all been settled by correspondence and by the tender and its acceptance. The detailed terms of the proposed lease and sale were also known to the plaintiffs and had been studied by them. As they were to be on the lines of the old lease a copy of it had already been supplied to the plaintiffs as stated above. The plaintiffs at the meeting raised four points in modification of the terms of the old lease relating to the reduction of security from Rs. 1,00,000 demanded by Mr. Herbert to Rs. 50,000 which the plaintiffs wanted to give and again with regard to the security of Rs. 50,000 which Mr. Herbert wanted all in cash the plaintiffs wanted to give half in cash and half in landed security and the second related to the duration of the contract and the option to terminate it. The plaintiffs wanted to give an option to either side to terminate the contract by one year's notice. The third related to a penalty which was provided in the event of non-payment of the instalment due from the plaintiffs in the last lease from which the plaintiffs wanted to be excused and the fourth related to the time when goods had to be removed from one portion of the forest to another with regard to which the plaintiffs wanted a change in date. According to Mr. Herbert, these four points which were raised at the meeting were mutually settled with the result that a contract for lease and sale of forest produce was finally concluded between the parties and the only thing which remained to be done was that the plaintiffs should deposit security, should register themselves as a company and should join in the execution of the deed and start working the contract according to its terms. It may be mentioned here that throughout the negotiations Mr. Herbert was acting on behalf of the defendant and the partners of plaintiff 2 were acting on behalf of the firm. The firm of plaintiff 2 not being a registered firm, at the meeting of 12th May it was mutually agreed that plaintiff 2 would get itself incorporated as a limited liability company and the formal deed of lease and sale of forest produce which was to be executed between the parties would be between plaintiff 1, the company on one side and defendant 1, the Secretary of State for India in Council, on the other.

8. The plaintiffs' version, on the other hand, is that up to 12th May 1931 the matter was still in the stage of negotiation and the bargain was not finally concluded. According to the plaintiffs, it was not settled till then whether the contract would take the form of a lease or would take the form of a sale or would take the form of a combined lease and sale. According to the plaintiffs it was not settled that the plaintiffs were bound to work the contract if they did not want to and according to the plaintiffs the plaintiffs' liability for payment of royalty only arose if the plaintiffs worked the contract and it was at the plaintiffs' option to work the contract or not. The plaintiffs further allege that it was not finally settled whether the option to terminate the contract would be one year's notice or six months' notice and the time within which landed security was to be deposited was not settled and some minor details about the working of the contract were not considered and discussed.

9. Before we express any opinion on this controversy, it is necessary to resume the narrative and describe the march of events after 12th May 1931. On 14th May 1931 the plaintiffs (Devi Prasad Sri Krishna Prasad Ltd., under formation) wrote a letter to Mr. V.A. Herbert, I.F.S., Conservator

of Forests, regretting that at the interview on the 12th they forgot to ascertain-as to in whose favour the security deposit was to be made and soliciting information about it. On 16th May 1931 Mr. Herbert acknowledged the above letter and in doing so he stated as follows:With reference to your letter of 14th May 1931. The arrangement that was eventually arrived at when you saw the Chief Conservator of Forests with me on 12th instant was that you would immediately deposit in my favour with the Imperial Bank of India, or the Allahabad Bank, a sum of Rs. 25,000 (Rupees twenty-five thousand) in current deposit and that you would forward me, before I leave for Chakrata, a letter from the bank stating that this amount had been placed to my credit, your own covering letter stating that the amount was the security deposit for entering into a contract for the bhabar grass of this circle, and that you would then as soon as possible arrange for the permanent security namely, Rs. 25,000 either in fixed deposit or in Government promissory notes, and Rs. 25,000 in landed property. As soon as that permanent security had been lodged with me, I was to replace the Rs. 25,000 of the current deposit at your disposal immediately. Will you, therefore, kindly act on these lines at once as the placing of Rs. 25,000 at my credit in current deposit is a matter which really requires no delay at all.

10. In reply to the above the plaintiffs addressed a letter to the Conservator of Forests dated 21st May 1931, with which they also sent a sum of Rs. 25,000 as security for the performance of the contract. This letter is one of the most important documents in the case and may be quoted in extenso:To The Conservator of Forests, Western Circle, U.P., In Camp Chakrata. Subject-Lease of Bhabar grass in all the accessible areas of the Western Circle, U.P. excluding Dehra Dun Division for a period of 10 years commencing from 1st July 1931 to 30th June 1941. Dear Sir, Pursuant to interview granted to the undersigned on the 12th instant and in continuation of our tender dated 29th April 1931, which you have so kindly accepted subject to the modification agreed upon by you and the Chief Conservator of Forests, U.P. Government, in our interview on the 12th instant we beg to enclose herewith a Fixed Deposit Receipt No. 14/191, dated 21st May 1931, for Rs. 25,000 (Rupees twenty-five thousand) of the Central Bank of India Ltd., Delhi, in your favor, as security for execution and due fulfilment of the agreement to be drawn for exclusive rights for cutting, collecting and exporting bhabar grass and other minor products as per details given in 01. 1 of the Draft Agreement forwarded by you with your letter No. 724-C/XXIL 17(b), dated 10th April 1931. We shall be obliged if you will now kindly ask the Government Conveyancer to draft an agreement embodying the modifications and send the same to us for our final acceptance. We further beg to inform you that as suggested by us in our last interview and approved by you, we are forming ourselves into a registered company under the Indian Companies Act, 1913 under the name and style of Devi Prasad Sri Krishna Prasad Ltd., and the lease therefore be kindly drawn in the name of the company so being formed. Since the security deposit as desired by you has now been lodged kindly issue necessary instructions to the District Forest Officers concerned that they may extend all facilities to our nominated representatives to inspect different forests under their control. Kindly acknowledge receipt of this letter. Yours faithfully, (Sd.) For Devi Prasad Sri Krishna Prasad.

11. On 26th May 1931, Mr. Herbert acknowledged by a letter the receipt of the security of Rs. 25,000 which again may be quoted in extenso:To Messrs. Devi Prasad Sri Krishna Pd., Sadar Bazar, Delhi. Dear Sirs, I am in receipt of your No. O/1/3, dated 21st May 1931, enclosing a fixed deposit receipt No. 14/191, dated 21st May 1931 with the Central Bank of India Ltd., Delhi, for the sum of Rs. 25,000 in my favour as security for the execution and due fulfilment of the agreement for the bhabar grass. I am not quite sure whether this fixed deposit is intended to be

part of the permanent security under the contract or not. As you will remember the arrangement agreed to by the Chief Conservator of Forests and you was that instead of a security of Rs. 1,00,000 as originally offered by you he would accept the security of Rs. 25,000 in fixed deposit, or Government promissory notes, and a further Rs. 25,000 in landed property. I presume that you are making arrangements as regards the latter without delay, but I am not clear whether this fixed deposit receipt is the security you offered for the former part or not. If it is intended to be the security of Rs. 25,000 in fixed deposit, or in Government promissory notes, I do not think that it is really acceptable as it stands, because I notice that the receipt states that the deposit remains 'till notice of twelve months on either side expires' and it also states on the top that notice to withdraw was given on 21st May 1931 and is therefore due to expire on 21st May 1932. I am writing to the bank to ascertain the exact position, but I am sure you will see that the security deposit for the contract must be absolutely at my disposal. That is an invariable condition of any contract with the forest department in this province. If therefore the fixed deposit receipt is intended to be the actual security of the contract, the condition of the deposit will have to be altered, so that the deposit is withdrawable on my request alone. Will you kindly let me know exactly what form you are proposing to furnish the full security for the contract? In the meantime I am, as you request, informing the Divisional Forest Officer concerned that the contract for the bhabar grass has been given to you with effect from 1st July next and telling them to allow your authorized representatives to inspect the forests at any time from now onwards in order to see what arrangements they have to make for the contract. I have already sent the Government conveyancer the draft agreement and as soon as I have received it back duly approved, I will at once send you a copy. If it is then in order, I will at once arrange to have it printed and send it to you for final acceptance. Yours faithfully, (Sd.) V.A. Herbert.

12. It will thus appear that a sum of Rs. 25,000 came in the hands of Mr. Herbert as security money "for execution and due fulfilment of the agreement to be drawn for exclusive rights for cutting, collecting and exporting bhabar grass and other minor products" and the terms and conditions on which the security money was deposited are set out in the two documents dated 16th May 1931 and 21st May 1931 quoted above. The former document was duly signed by plaintiff 2 and the latter by the Conservator of Forests. It further appears that throughout the proceedings it was accepted on both sides that the Conservator of Forests was acting for the defendant and that the lease would be in the name of the defendant and, though not in the beginning, at a later stage, it was accepted that although the money was deposited by plaintiff 2 the formal deed would be in favor of plaintiff 1 who would come into existence as a result of the incorporation. (After referring to the further correspondence that took place between the parties, mentioning the points of controversy and stating the fact that on 4th September 1931 plaintiff 1 was registered as a company, the judgment proceeded). On 1st October 1931, Mr. Herbert closed further negotiations with the plaintiffs and on 11th December 1931, he informed the plaintiffs "I have confiscated the security of Rs. 25,000 and that I may take such further action as I may be advised to take," and as a result the plaintiffs raised this action on 9th March 1933, for recovery of the said Rs. 25,000 with interest due.

13. The first matter which falls for consideration is whether the bargain between the parties was concluded on 12th May 1931, or whether it was still at large. All the circumstantial evidence and all the probabilities of the case favour the conclusion that the bargain had been settled. Immediately after 12th May 1931, security was demanded and was paid and soon after the security was paid the draft deed was sent to the plaintiffs for approval. It is a matter of common

experience that the security of a large sum of money, Rs. 25,000, is not paid till the contract is settled. Again it is a matter of common experience that the conveyancers are not asked to draft the deed till the terms of the deed have been settled. Then there are letters which passed between the plaintiffs and defendant dated 16th, 21st and 26th May 1931, by which security money was paid and was received which indicate that the contract had been settled and nothing remained further to be done beyond executing the deed and going on with the contract. It will be remembered that the contract was to be worked from 1st July 1931. The draft was sent to the plaintiffs on 9th June 1931. It must be presumed that the plaintiffs must have seen and studied the draft which had been sent to them. Up to 4th August 1931 three urgent reminders were addressed by the defendant to the plaintiffs to approve of the draft and the plaintiffs raised no objection about the terms of the draft, nor did they take any action to push forward the work in connexion with the contract. Three months later, in September, the plaintiffs sent their own amendments of the draft to the defendant and the only alterations which they suggested related to the extension of time with regard to their landed security and to the reduction of the period of notice from one year to six months and one or two minor matters but no question was raised about the bargain being an agreement of lease or an agreement of sale or about any other matter. The defendant agreed to all the amendments suggested by the plaintiffs and then the plaintiffs raised a new and fresh contention that the plaintiffs would only be liable in case they worked the contract and it would be at their option to work the contract or not.

14. The plaintiffs are a commercial firm. Before making their tender they must have studied the old lease. All the essentials of the transaction namely the commodity which was to be sold and the price which was to be paid for it were settled by the tender and by the acceptance of the tender. The only question which remained was the period of the lease, the notice under which it could be terminated and the amount of security and its manner of payment. These were all admittedly the subject of discussion at the meeting in 12th May 1931. What was the point in starting a discussion about them and not settling them? If these matters were also settled what remained at large between the parties? The plaintiffs contend that the question of lease and sale was not settled and the further question whether they would have the option to work the contract and to pay for it when they worked it was not settled. We are satisfied that no importance whatever was attached to the form of the transaction whether it was lease or sale. We are also satisfied that it was clearly understood that the plaintiffs would have to pay for the contract whether they worked it or not. We are also satisfied that the period of notice and the form of security were all duly settled at the meeting of 12th May 1931 and such alterations as were suggested by the plaintiffs in their amendment in September 1931 were new proposals and the defendant accepted them not because these matters had not previously been settled but as a concession to the plaintiffs and to avoid unpleasantness in termination of the contract.

15. The conclusion at which we have reached is that on 12th May 1931, the contract for lease and sale of forest produce was concluded between the plaintiffs and the defendant and it was further agreed on that date that the plaintiffs would deposit a temporary security of Rs. 25,000 and later on a permanent security of Rs. 50,000 when the former security of Rs. 25,000 would be returned and that a formal deed would be executed later on and that the security money deposited by the plaintiffs would be security money both for the execution of the deed and for the fulfilment of the terms of the contract and in the event of failure of execution of the deed or in the event of breach of terms of the contract the security would be liable to be forfeited and in pursuance of this agreement the plaintiffs deposited the security of Rs. 25,000 with the

defendant. Later on, without any valid reason the plaintiffs refused to execute the lease and sale. There is some controversy as to what led the plaintiffs to repudiate the contract. It is suggested that they had entered into the contract in the expectation of securing the lease of some paper mill which did not materialize later on and therefore the need of the contract disappeared and led to its repudiation. Whether this was the reason or there was some other reason at the back of the plaintiffs' mind it is not necessary to determine but we are clear that they had settled the bargain on 12th May 1931 and they wrongfully repudiated it subsequently in September 1931.

16. The plaintiffs contend that, even if the Contract was completed on 12th May 1931, and even if the plaintiffs are in default in not carrying out the contract, still they are entitled to recover the sum of Rs. 25,000, the security money, because it was a condition of the contract that a formal deed would be executed later on embodying the contract and, until such deed was executed the contract was not complete and they had an option not to go on with it. The plaintiffs further contend that the law does not recognise a contract for making a contract and the agreement which was reached on 12th May 1931, between the parties provided that a formal deed would be executed later on embodying the contract and, in that sense, the agreement of 12th May was nothing but a contract for making another contract. It is further contended that the agreement of 12th May 1931, was an oral agreement or, at best, evidenced by a series of letters and documents, whereas Section 30, Government of India Act, requires that the agreement should have been by a formal deed. It is further contended that the agreement was that a formal deed would be executed between the Secretary of State and plaintiff 1, a limited liability company, and so far as the Secretary of State was concerned, it failed because the terms of Section 30, Government of India Act, were not complied with, and so far as the company was concerned, it failed because it was a pre-incorporation agreement and it was at the option of the company to accept it or not. There is no doubt that, at the time when the agreement was reached on 12th May 1931, the parties contemplated execution of a formal deed of lease and sale of the forest produce, but the mere fact that the parties contemplated execution of such a deed would not per se make the agreement of 12th May incomplete. The law on the subject is well settled and has been stated in a famous passage by Lord Parker in *Von Hatzfedt-Wildenburg v. Alexander*<sup>1</sup> His Lordship said: It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition of term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through, In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored.

17. The statement of law was approved by the Judicial Committee in three cases : *Hukuma Chand v. Ran Bahadur Singh*<sup>2</sup> *Harichand Mancharam v. Govind Laxman*<sup>3</sup> and *Currimbhoy & Co. Ltd. v. L.A. Creet*<sup>4</sup> In *Hukuma Chand v. Ran Bahadur Singh* ('27) 11 A.I.R. 1924 P.C. 156(Supra) Lord Shaw observed: The cases upon the subject are legion and one citation very properly noted in the judgment of Mullick J., may be here repeated, namely, that made from the judgment of Lord Parker (as he afterwards was) in *Von Hatzfedt-Wildenburg v. Alexander*<sup>5</sup>

18. And after this observation he quoted in extenso the passage which we have also Quoted above. In *Harichand Mancharam v. Govind Laxman* (23) 10 A.I.R. 1923 P.C. 47(Supra), Mr.

Ameer Ali delivering the judgment of the Court observed as follows: Whether an agreement is a completed bargain or merely a provisional arrangement depends on the intention of the parties as deducible from the language used by the parties on the occasion when the negotiations take a concrete shape. As observed by the Lord Chancellor (Lord Cranworth) in *Ridgway v. Wharton* (1857) 6 H.L.C. 238 the fact of a subsequent agreement being prepared may be evidence that the previous negotiations did not amount to an agreement, but the mere fact that persons wish to have a formal agreement drawn up does not establish the proposition that they cannot be bound by a previous agreement.

19. It is true that the parties on 12th May 1931, contemplated that a formal deed of lease and sale would be executed later on embodying the terms of the agreement which was settled between them on 12th May 1931, but the execution of the agreement deed was not made a condition of the contract and the contract had become fully complete without it. Indeed, it was distinctly provided that the plaintiffs would execute a deed and after the execution of the deed fulfil the terms of the contract, and for the due performance of this obligation of execution of the deed and of fulfilling the terms of the contract the sum of Rs. 25,000, which is now in dispute, was deposited as security money. One of the main objects of this deposit was its liability of forfeiture in case the plaintiffs, without any justifiable reason, refused to execute the deed; and this is not a case where the contract was for making a contract, but the contract had already been made and there was nothing more to settle; only a formal deed was to be executed, and in order to prevent its non-execution without any justifiable reason security money was wanted and was given. There was no written record or memorandum made of the agreement which was reached on 12th May 1931. The terms of the agreement on 12th May 1931 are to be gathered from the copy of the lease which was given to the plaintiffs in April 1931 and from the plaintiffs' tender and its acceptance and from the letter by which the security money was deposited and was accepted and from other correspondence and draft leases in the case. Relevant provisions of Section 30, Government of India Act, 1918, This seems to be a slip for the figure 1919 - Ed., which was the Act applicable to the transaction, are as follows:

- (1) The Governor-General in Council and any Local Government may, on behalf and in the name of the Secretary of State...sell and dispose of any real or personal estate whatsoever in British India, within the limits of their respective governments, for the time being vested in His Majesty for the purposes of the Government of India...and make any contract for the purposes of this Act.
- (2) Every assurance and contract made for the purposes of Sub-section (1) of this section, shall be executed by such person and in such manner as the Governor-General in Council by resolution directs or authorizes, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

20. It is generally agreed that the provisions of Section 30, Government of India Act, are mandatory and for a contract to be enforceable by or against the Secretary of State the terms of this section must be complied with. It is also a matter of general agreement that an oral contract is not within the purview of Section 30, and Sub-section (2) of this section implies execution of a document and excludes oral contracts, but there is a controversy on the question whether the contract should be expressed by a formal deed or whether it is a sufficient compliance of the statute if the agreement is in writing, though not expressed by a formal deed. In *Municipal Corporation of Bombay v. Secretary of State*<sup>6</sup> *Secretary of State v. Yadavgir Dharamgir*<sup>7</sup> and *Krishnaji nilkant v. Secy. of State*<sup>8</sup> the view was expressed that to comply with the provisions of

Section 30, Government of India Act, a formal deed was necessary and a contract within the terms of that section cannot be spelt out of correspondence or out of a series of letters and other informal documents; and this Bombay view has also been followed in *Sankara Mining Syndicate Ltd. v. Secretary of State*<sup>9</sup> *Secretary of State v. Chettyar Firm*<sup>10</sup> and *Secretary of State v. G.T. Sarin & Co*<sup>11</sup>. On the other hand, in *Secretary of State v. Bhagwandas*<sup>12</sup> it was held that a contract to satisfy the conditions of Section 30, Government of India Act, need not be incorporated in a formal deed or be under seal, and that it may well be entered into by correspondence and by less formal documents. A good deal of Government business is being done in the form of tenders and acceptance of tenders in which, till a very late stage, formal deeds are not drawn up. However much desirable it may be to have a formal deed with regard to all the agreements made by the Government, we are not prepared to hold, as a matter of law, that an agreement evidenced by tenders and acceptance of tenders or an agreement evidenced by correspondence or other documents of informal nature, though fully established by evidence, must fail and be said to offend the terms of Section 30, Government of India Act. In our opinion, it is a sufficient compliance with the terms of Section 30 if the agreement is expressed in writing, and this writing may comprise of a series of letters or a series of informal documents.

21. In the trial Court no question was raised about the incompleteness of the contract for want of compliance with the provisions of Section 30, Government of India Act. Mr. Kunzru who has argued the case of the plaintiffs before us with ability, strongly contended before us that he had raised the points in the trial Court and by some oversight the trial Court has failed to notice them in its judgment. On the pleadings in the Court below the case was fought out on pure questions of fact, namely whether the agreement was in fact completed between the parties or not or whether it remained throughout in a stage of negotiations. To avoid any possible grievance in the matter, we have permitted all the questions of law to be discussed before us which the plaintiffs wanted to do. It is not disputed that the Conservator of Forests, Mr. V.A. Herbert, who conducted the negotiations with the plain, tiffs, was authorized to enter into contracts on behalf of the defendant. The previous lease, a copy of which was given to the plaintiffs in April 1931, was executed by the Conservator on behalf of the Secretary of State. It is also not disputed that the proposed lease and sale which was to be executed between the plaintiffs and the Secretary of State was also to be executed by the Conservator, as will appear from the drafts on the record. On p. 191 of the General Rules and Orders made under enactments in force in British India, issued by the Legislative Department of the Government of India, the authority of the Conservator to enter into " contracts or other instruments in matters connected with the administration and working of forests and with the business of the Forest Department generally" is set out. It is also not disputed that throughout the negotiations Mr. Herbert was acting on behalf of the Secretary of State and the correspondence and documents on the record show that he was so doing. So far as the authority of the person making the contract was concerned, there is no difficulty; but it is contended that the agreement which was finally reached on 12th May 1931 was not reduced into writing and was an oral agreement only and, as such, it is ineffective against the Secretary of State and it is ineffective against plaintiff 1, the company, because the company had not come into existence. It would have been more desirable if the discussion and settlement at the meeting of 12th May 1931 had been reduced into writing at the time when the meeting took place and should have been signed by the parties.

22. It will be in the public interest and desirable from every point of view if the Government Officers, after an agreement is reached, take the precaution of preparing a memorandum signed

by both parties, setting out the terms which are reached. The practice of leaving the agreement in the form of correspondence and tenders in anticipation of a formal deed to be executed later on is irregular and has nothing to recommend. The proper procedure should be that, after an agreement is reached, a memorandum of the agreement should be contemporaneously prepared and signed by the parties as evidence of the agreement to be followed later on by a formal document drawn up by a Government conveyancer, but we do not think-whatever may be said from the point of view of expediency and public interest-that the law requires that contemporaneously with an oral agreement a document should also be prepared or signed, and it is permissible to record the agreement, arrived at orally, later on by correspondence. We therefore think that the agreement in this case, though it was not recorded on 12th May 1931, was subsequently recorded in the correspondence and documents which we have referred to above and that the agreement between the parties was not an oral agreement but an agreement in writing, though not expressed by a formal deed which, however desirable, was not legally essential.

23. There is one other aspect of the case which might at this stage be considered. This is not an action for specific performance of contract either by or against the Secretary of State or against the company. The plaintiffs in this action are seeking to recover a sum of Rs. 25,000, which plaintiff 2 had deposited with the Conservator of Forests as security money for execution of a contract of lease and purchase of grass and other forest produce and for fulfilment of its terms. This deposit was made by a letter of the plaintiff, dated 21st May 1931, and was accepted by a letter of the Conservator, dated 26th May 1931. The security money was thus deposited by plaintiff 2 with the defendant under an agreement in writing. The very fact that it was security money implies that it was given as a guarantee for the performance of an obligation and was liable to be forfeited if the obligation was not performed. One of the obligations for which the security money was deposited was the execution of a formal deed of lease and sale by the plaintiff. If plaintiff 2 or, for the matter of that, plaintiff 1, has unjustifiably refused to execute the deed, on what ground of law and equity can they ask for the return of the deposit money? Their agreement, as expressed in the letter of 21st May 1931, is, in our view, a complete answer to this action, and we need not consider the difficulty which might have arisen if the suit had been brought by any party to specifically enforce the contract of 12th May 1931; and this also disposes of the remaining contention of the plaintiffs that the agreement of 12th May was a pre-incorporation agreement and was not binding on the company. Nobody is enforcing a contract against the company. It is the company which is seeking to recover a deposit which was not made by it but by plaintiff 2 in the circumstances mentioned above, and the company therefore has no right to recover this money. The appeal fails and is dismissed with costs.

#### Cases Referred.

1(1912) 1 Ch. 284 at p. 288

2('27) 11 A.I.R. 1924 P.C. 156

3('23) 10 A.I.R. 1923 P.C. 47

4 ('38) 20 A.I.R. 1933 P.C. 29

5(1912) 1 Ch. 284 at p. 288

6('34) 21 A.I.R. 1934 Bom. 277

7('36) 23 A.I.R. 1936 Bom. 19

8('37) 24 A.I.R. 1937 Bom. 449

9('38) 25 A.I.R. 1938 Mad. 749

10('27) 14 A.I.R. 1927 Rang. 14  
11('30) 17 A.I.R. 1930 Lah. 364  
12('38) 25 A.I.R. 1938 Bom. 168