

LAHORE HIGH COURT

Lachhman Singh

Vs

Natha Singh

(Tek Chand, J.)

11.07.1940

JUDGMENT

Tek Chand, J.

1. The following seven cases have been referred by different Benches of this Court to a Full Bench and as the questions involved are the same, they have been heard together and will be disposed of in one judgment: *Amar Chand v. Hoshnak Singh*¹; *Lachhman Singh v. Harnam Singh*², etc.; *Bhagat Singh v. Khanu*³; *Sardar v. Lal Khan*⁴, etc.; *Labh Singh, etc. v. Parma Nand*⁵; *Narindar Singh v. Narinjan Singh*⁶, etc.; *Gurbachan Singh v. Gulab*⁷.

2. The material facts are no longer in dispute and are substantially the same in all cases. In each case, a mortgage with possession of agricultural land had been effected and the conditions were that the mortgagee would pay the land revenue, cultivate the land himself or through tenants and realize the produce, which will equalize interest, and that redemption would take place whenever the mortgagor paid to the mortgagee the principal sum secured. There was no provision empowering the mortgagee to bring the mortgaged property to sale, nor was there any stipulation indicating that the mortgagor had incurred personal liability for repayment of the mortgage money. The mortgagee was put in actual possession of the land and (except in one case to which reference will be made presently) retained it till institution of the suit. It may be stated that none of these mortgages infringed the provisions of the Punjab Alienation of Land Act; in some of them both the mortgagor and the mortgagee are members of agricultural tribes and in others both are non-agriculturists. After the passing of the Punjab Relief of Indebtedness Act, 7 of 1934, an application was made under Section 9 of the Act before the Debt Conciliation Board, established in the area where the land concerned in each case is situate, to "effect a settlement of the debts" due by the mortgagor with his creditors. In the list of debts, alleged to be due by him, the mortgage in question was also included and the mortgagee was mentioned as one of the creditors. The Board, in accordance with the provisions of the Act, served notice on the mortgagee to appear on the date fixed. The mortgagee however either did not appear, or, if he appeared, did not produce the mortgage deed nor did he submit a statement of the amount due to him on foot of the mortgage. On this the Board, treating the amount secured on mortgage as a "debt," passed an order under Sub-

¹ R.S.A. 1208-38

³ R.S.A. 518-39

⁵ R.S.A. 1323-39

⁷ R.S.A. 1481-39

² R.S.A. 1574-38

⁴ R.S.A. 851-39

⁶ R.S.A. 1447-39

section (2) of Section 13 of the Act declaring that, as the mortgagee had not complied with the

provisions of Sub-section (1) of that Section, his mortgage "shall be deemed for all purposes and all occasions to have been fully discharged."

3. In three of these cases (R.S.A. No. 1208 of 1938, R.S.A. No. 1574 of 1938 and R.S.A. No. 1447 of 1939) the mortgagors, on the strength of the order passed by the Board, instituted suits in the Civil Court against the mortgagee for possession of the mortgaged land without any payment. In three others (R.S.A. No. 518 of 1939, R.S.A. No. 851 of 1939 and R.S.A. No. 1323 of 1939) the mortgagees sued for a declaration that they were in lawful possession as mortgagees and were entitled to retain it until redemption on payment of the mortgage money in accordance with the terms of the deed. In the seventh case (R.S.A. No. 1481 of 1939), after the order of the Board, the mortgagor had taken forcible possession of the land and, accordingly, the mortgagee sued for recovery of possession, alleging that the mortgage was still subsisting, that the mortgagor's act was unlawful and that possession be restored to him till the mortgage is redeemed as provided in the deed. In each case the mortgagee contended that the mortgage in his favor was 'usufructuary,' that such a mortgage does not create a 'debt,' nor is the mortgagor a 'debtor,' as defined in Section 7, Punjab Relief of Indebtedness Act, and, therefore, the Board had no jurisdiction to "effect a settlement" between them in respect of the mortgage and its order declaring that the mortgage shall be deemed to have been discharged was ultra vires, void and of no legal effect whatever. On behalf of the mortgagor these contentions were traversed, and it was averred that the order passed by the Board under Section 13(2) was valid and proper and that Civil Courts had no jurisdiction to question its validity or to adjudicate upon the question as to whether the mortgage had been discharged or was still subsisting.

4. Four of these cases (R.S.A. No. 518 of 1939, R.S.A. No. 851 of 1939, R.S.A. No. 1323 of 1939 and R.S.A. No. 1481 of 1939) were heard by the same Subordinate Judge at Rawalpindi, who decided in favour of the mortgagee. On appeal the Senior Subordinate Judge, Rawalpindi, however, came to the contrary conclusion and held that a usufructuary mortgage created a 'debt' within the meaning of the Act and that Civil Courts had no jurisdiction to question the validity of the declaration made by the Board. In two other cases, (R.S.A. No. 1574 of 1938 and R.S.A. No. 1447 of 1939) which are from Amritsar district, the trial Judges decided against the mortgagees and their decisions were upheld on appeal by the Senior Subordinate Judge and the Additional District Judge of Amritsar respectively. In R.S.A. No. 1208 of 1938, the trial Judge decided in favour of the mortgagor, but his decision was set aside on appeal by the Senior Subordinate Judge, Hoshiarpur. In all seven cases second appeals were preferred in this Court; two of which (R.S.A. No. 1208 of 1938 and R.S.A. No. 1574 of 1938) came up for hearing before Skemp J. sitting in Single Bench, who in an elaborate order tentatively expressed his opinion in favour of the contentions of the mortgagee, but in view of the difficulty and importance of the questions involved referred them to a Full Bench. Subsequently, four other appeals (R.S.A. No. 1447 of 1939, R.S.A. No. 851 of 1939, R.S.A. No. 1323 of 1939 and R.S.A. No. 1481 of 1939) came up before Din Mohammad J., and the fifth, R.S.A. No. 518 of 1939, before Dalip Singh J., and they also referred them to the Full Bench. The two questions which require decision are: (1) Does a mortgage of the type described above create a 'debt' within the meaning of Section 7, Punjab Relief of Indebtedness Act? and (2) Where after a Debt Conciliation Board, constituted under Part IV of the Act, has passed an order purporting to be under Section 13(2) of the Act, declaring that a particular debt shall be deemed to have been discharged for all purposes and all occasions, is a Civil Court competent to decide that the 'transaction' in question does not create a 'debt' as defined in the Act, and that the order of the Board was ultra vires and of no legal effect?

5. Before examining the provisions of the Act, it seems necessary to determine the exact nature of the transactions in question and the rights and obligations of the parties under them. From the conditions of the mortgages already given, it will appear that they are "usufructuary mortgages" as defined in cl. "(d), Section 58, Transfer of Property Act. That Act, of course, is not in force in the Punjab, but the definitions of the various kinds of mortgages given in it have always been accepted as correctly describing their essential ingredients and incidents. This definition is as follows:

(d) Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee and authorizes him to retain such possession until payment of the mortgage money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage money, or partly in lieu of interest and partly in payment of the mortgage money, the transaction is called a "usufructuary mortgage," and the mortgage a "usufructuary mortgage."

6. It will be seen that the characteristics of a usufructuary mortgage, as defined above, are: (1) that the possession of the mortgaged property is delivered, or agreed to be delivered, to the mortgagee; (2) that he is to appropriate the rents and profits either (a) in lieu of interest, or (b) towards the principal, or (c) partly in lieu of interest and partly in payment of the principal; (3) that in none of these cases the mortgagor incurs any personal liability to repay; and (4) as the mortgagor has not bound himself to repay (but may repay if and when he chooses) there can be no "forfeiture" and therefore the remedies by way of foreclosure or sale are not open to the mortgagee.

7. These propositions are too well established to require an elaborate discussion. In *Ram Narain Singh v. Adindra Nath*⁸ their Lordships of the Privy Council after examining the particular deed before them held that, having regard to the nature of the deed which was a usufructuary mortgage only and to its terms, any personal liability on the part of the "mortgagor was excluded." Again, there is a large number of cases in which it has been held that a usufructuary mortgagee is not entitled to sue for sale of the property (*Chathu v. Kunjan*⁹ *Sadashiv v. Vyankatrao*¹⁰ *Umrao v. Umrao Begam*¹¹ and *Luchmeshar Singh v. Dookh Mochan Jha*¹² and where there is a stipulation to the contrary the transaction ceases to be one of "usufructuary mortgage" but is what is described as an "anomalous mortgage." As stated in (2) above, usufructuary mortgages are of three kinds. Of these, the two described in (b) and (c) are self redeeming; the mortgagee has to look to the rents and profits only to re-pay himself and when his entire charge is so liquidated he must re-deliver possession of the mortgaged property to the mortgagor free from all encumbrances. A common

⁸ AIR (1916) PC 119

¹⁰(1896) 20 Bom 296

¹²(1897) 24 Cal 677

⁹(1889) 12 Mad 109

¹¹(1889) 11 All 367

instance of this kind of mortgage found in the Punjab, especially in the western districts, is the lekha mukhi mortgage where the mortgagee takes over the land and binds himself to keep the lekha (account) of the produce, and as soon as the principal and interest have been paid off therefrom, he must surrender the property to the mortgagor. In this mortgage the mortgagor undertakes no personal liability and while he is competent at any time to claim redemption on payment of the amount found to be due under the mortgage the mortgagee is not entitled to sue

for his debt (per Plowden J. in *Gahimal v. Shera*¹³). Another familiar instance of this kind of mortgage is the one permitted under Section 6 or Section 14, Punjab Alienation of Land Act, in which the entire principal and interest is automatically wiped off within a specified period, not exceeding 20 years, irrespective of whether the rent and profits actually realized by the mortgagee are more or less than the principal sum secured and interest due thereon. In this case also there is no personal liability of the mortgagor to pay nor has the mortgagee a right to bring the property to sale.

8. The most common form of usufructuary mortgage however is that described in 2(a) above, and it is to this class that the mortgages in the cases before us belong. Here the rents and profits are to be set off against interest and the mortgagee is entitled to retain possession until such time as the mortgagor chooses to redeem on payment of the principal sum secured. This form of mortgage has been in vogue in India since ancient times. It was known to the Hindu lawyers under the expressive name of bhog bandakam which literally means "mortgage (bandaka) by enjoyment (bhog)." It was a mortgage for an indefinite period, during which the mortgagee enjoyed the usufruct and the mortgagor was entitled to redeem at any time on payment of the principal. It retained its popularity during the Mughal period, especially among the Mahomedan creditors who by obtaining possession of property (as a zer-i-peshgi lessee and under other similar names) and appropriating the rents and profits till redemption, could find a safe investment for their money without charging interest. This form of mortgage is not peculiar to India alone. It has been described by Dr. Ghose and other standard writers as analogous to what was known as a 'Welsh mortgage' in England, where it has now become obsolete. But it has been the subject of judicial consideration in Ireland in recent times, and there are reported cases to which reference may usefully be made. In *Balfe v. Lord*¹⁴ Lord St. Leonards described a Welsh mortgage as one under which the lender goes into possession of the rents and continues to receive them until the party who borrowed the money, chooses to redeem and this he is always permitted to do, so that the peculiarity is that while there can be no foreclosure on the part of the mortgagee, still the right of redemption subsists in the mortgagor.

9. More recently in Ireland, in *Cassidy v. Cassidy*¹⁵ Johnson J. described a Welsh mortgage as a kind of security by which on the one side the land is assured to the lender as his security--his possession of the land and enjoyment of the profits being in lieu of interest--while on the other side, the borrower is under no personal obligation to pay the principal money but is entitled to redeem at any time upon its payment.

10. Again, *In Re Cronin*¹⁶ it was pointed out that a power of sale was

¹³(1881) 90 PR 1881

¹⁵(1890) 24 LR Ir 577

¹⁴(1842) 2 Dr & War 480

¹⁶(1914) 1 Ir R 23

wholly inconsistent with the 'continuing' right of redemption which the Welsh mortgage carries and that the express inclusion in the security of such a stipulation showed that security was not a Welsh mortgage.

11. It will be clear from the foregoing discussion that the principal characteristics of a usufructuary mortgage are that there is no personal liability of the mortgagor to pay, nor has the mortgagee a right to have the mortgaged property brought to sale. The next question for consideration is whether a mortgage of this kind creates a 'debt' and the mortgagor is a 'debtor' as defined in the Punjab Relief of Indebtedness Act. Section 7(1) of the Act reads as follows:

'Debt' includes all liabilities of debtor in cash or in kind, secured or unsecured, payable under a decree or order of a Civil Court or otherwise, whether mature or not, but shall not include debts incurred for the purposes of trade, arrears of wages, land revenue or anything recoverable as an arrear of land revenue, or any debt which is barred by the law of limitation, or debts due to Co-operative Banks, etc. etc.

12. It will be seen that this definition is not exhaustive. It enlarges the ordinary meaning of 'debt,' so as to include certain liabilities of the debtor enumerated therein, and at the same time, it excludes from its purview certain other of his liabilities which would otherwise be included in it. Now, can money secured by a 'usufructuary mortgage' be called a 'debt' either according to the ordinary meaning of the word, or its enlarged significance under the Act? In Webster's Dictionary, 'debt' is defined as that which is due from one person to another, whether money, goods or services; that which one person is bound to pay to another or to perform for his benefit; thing owed; obligation; liability.

13. Similarly, in the Oxford English Dictionary the definition given is that which is owed or due; anything (as money, goods or service) which one person is under obligation to pay or render to another.

14. In Stroud's Judicial Dictionary a debt is described as being a "sum payable in respect of a liquidated money demand, recoverable by action." The essence of a "debt," thus, is the liability of the obligor which the obligee is entitled to enforce by action. Where therefore a transaction neither imports the personal liability of the obligor to pay, nor confers on the obligee the right to recover the amount by the coercive machinery of the law, it cannot be called a "debt." This was not seriously disputed by the learned Counsel for the mortgagors. But they contended that under the enlarged definition, as given in the Act, "debt" includes a "secured liability of the debtor" and a usufructuary mortgage is a "secured liability." This contention is however based on a misconception of the legal significance of "liability." As pointed out by Salmond in his Jurisprudence (Edn. 9, page 498), liability is the vinculum juris not of mere duty; ... it pertains not to the sphere of 'ought' but to that of 'must.' It has its source in the supreme will of the State, vindicating its supremacy by way of physical force in the last resort against the unconforming will of the individual. A man's liability consists in those things which he must do or suffer, because he has already failed in doing what he ought. It is the ultimatum of the law.

15. Judged in this light, it must be conceded that a usufructuary mortgagor is under no liability to the mortgagee. He is under no legal obligation to pay; it is his option to redeem, if and when he chooses. That the interest of a "usufructuary mortgagee" is not a "debt" and cannot be attached as such under Order 21, Rule 46, Civil P.O., has been held in numerous cases. In *Mani Lal v. Motibhai*¹⁷ Scott, C.J. and Batchelor J. held that in the case of a usufructuary mortgage there was no "debt" payable by the mortgagor to the mortgagee which could be attached in execution of a money decree against the assignees of the mortgagee and therefore the procedure laid down in Section 268 of the Code of 1882 (= Order 21, Rule 46 of the Code of 1908) was not applicable. To the same effect is the decision of the Madras High Court in *Subraya Pai v. Subramania Pattar*¹⁸ A Full Bench of the Allahabad High Court in *Fateh Singh v. Raghbir Sahai*¹⁹, has described the interest of a usufructuary mortgagee as "a right to the benefits and usufructs arising out of it" and nothing more.

16. The learned Counsel for the mortgagors referred us to a decision of the Full Bench of the Allahabad High Court in *Fateh Chand v. Muhammad Bakhsh*²⁰ where it was held that a suit for sale of property on a mortgage could not be maintained without a succession certificate as the suit related to a "debt" within the meaning of the Succession Certificate Act, 7 of 1889. The mortgage under consideration in that case however was not usufructuary, as appears from the statement of facts at page 269, for the plaintiff in his plaint had in the first instance claimed a decree against the defendant for a certain sum of money together with interest and costs, and had also prayed that in default of payment, the mortgaged property be sold and in case the sale proceeds were found to be insufficient, a decree for the balance be passed against the mortgagor personally or against her property other than that which was the subject of the mortgage. It may also be stated that the correctness of the rule laid down by the Allahabad High Court in the case cited, that a succession certificate is necessary for maintaining a suit by a mortgagee for recovery of the amount due by Sale of the mortgaged property is open to serious doubt, and that case has been dissented from expressly in *Palaniyandi Pillai v. Veerammal*²¹ *Nanchand v. Yenawa*²² *Saw Chong Gye v. Hafiz Bibi*²³ and *Mahomed Yusuf v. Abdur Rahim Bepari*²⁴ The practice in the Punjab has uniformly been not to require succession certificates in such cases. Counsel next relied upon *Wahiduddin v. Makhan Lal*²⁵, a case under the U.P. Agriculturist Debtors' Relief Act, 27 of 1934, the headnote of which seems at first sight to support the mortgagor's contention. In that case however it was definitely found by the learned Judges (p. 566, col. 2) that the transaction in question was not a usufructuary mortgage. The discussion in the judgment as to whether the usufructuary mortgage creates a "debt" and the usufructuary mortgagor is a "debtor" was thus really obiter. Further the suit was by the mortgagor under Section 33 of the Act for an account of "money lent" to him by the defendant-mortgagee, and the decision turned on whether "money lent" on the mortgage was a "loan" within the meaning of the Act. In Section 2(10) of that U.P. Act, "loan" is defined as meaning an advance to an agriculturist, whether in money or in kind and shall include any transaction which is in substance a loan.

¹⁷(1911) 35 Bom 288

¹⁹ AIR 1938 All 577

²¹(1906) 29 Mad 77

¹⁸ AIR (1928) Mad 648

²⁰(1894) 16 All 259

²²(1904) 28 Bom 630

²³ AIR (1934) Rang 369

²⁵ AIR 1938 All 564

²⁴(1899) 26 Cal 839

17. This definition is much wider than that of "debt" in the Punjab Relief of Indebtedness Act, as it stands at present. The provisions of the two Acts are not in pari materia and therefore the case cited is of no real assistance in interpreting the Punjab Act. Before concluding this part of the case, a passing reference must be made to Sub-section (2) of Section 7, Punjab Act, which defines a "debtor" as meaning "a person who owes a debt" and possesses certain other qualifications (which are set out in detail in the Sub-section and which need not be reproduced here as they are not material for our present purposes.) It was admitted that this definition does not carry the matter further, for, where a transaction is not a "debt" as defined in the Act, a party to it cannot be described as a "debtor." For the foregoing reasons, the first question must be answered in the negative, and it must be held that a "usufructuary mortgage" does not create a "debt" and a "usufructuary mortgagor" is not a "debtor" within the meaning of the Act.

18. The next question is whether a Debt Conciliation Board, constituted under Part IV of the Act, has jurisdiction to deal with a mortgage of this kind, and if it has actually passed an order under Section 13(2) declaring that the mortgage shall be deemed to have been discharged for all purposes and all occasions, whether such order is final, or can its validity be questioned in Civil

Courts. An examination of the provisions of this Part of the Act shows that Debt Conciliation Boards are established for the purpose of "amicable settlement between "debtors" and their creditors:" (Section 8). The proceedings before the Board are started on application made by a "debtor" or any of his creditors, who has to state, inter alia, that the "debtor" is unable to pay his "debts" (Ss. 9 and 11). The Board is then to fix a date for hearing the application, when it has to publish a notice in the prescribed manner, calling upon every creditor of the "debtor" to submit a statement of the "debts" owed to him by the "debtor" within a specified time (Section 13(1).) The failure of a creditor to submit a statement in response to this notice entails very serious consequences. Sub-section (2) of that Section lays down that every "debt" of which a statement has not been submitted to the Board in compliance with the provisions of Sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged.

19. The succeeding Sections contain the procedure for submission of the statement of debts, the manner in which the creditor and the debtor are to explain their respective cases "regarding each debt;" the method by which the Board is to attempt to bring about an amicable settlement; and if it succeeds in doing so, how the agreement is to be registered; and if a creditor refuses to accept a 'fair offer' by the debtor the circumstances in which the Board is to issue a certificate in "respect of debts." It is clear from this analysis of the relevant provisions of the Act, that these Boards have been established for the purpose of bringing about amicable settlement between a 'debtor' and his creditors in respect of his 'debts' as defined in the Act; and their jurisdiction is limited to dealing with such 'debts' only. They have no authority to deal with transactions of any other kind with which the debtor might be concerned. If therefore a Board purports to pass an order, or make a declaration in respect of a transaction which is not a 'debt' as defined in the Act, it clearly does so in excess of its jurisdiction. It is well settled that the powers of a tribunal of special jurisdiction are circumscribed by the statute under which it was constituted. Such tribunal must act within its powers, and so long as it does so, its orders, whether right or wrong, cannot be challenged except in the manner and to the extent prescribed in the statute, and Courts of ordinary jurisdiction cannot question them. But where, and in so far as, its actions are in excess, or in contravention of the powers conferred on it, they are ultra vires and of no legal effect and obviously cannot have the same immunity. As pointed out by their Lordships of the Privy Council in the leading case *Colonial Bank of Australasia v. Willan (1874) LR 5 PC 417(SUPRA)*, where an order of a quasijudicial authority is objected to before a Court, it has to be seen whether the objection relates to defeat of jurisdiction, founded on the character and constitution of the tribunal, the nature of the subject-matter of the enquiry or the absence of some preliminary proceeding which was necessary to give jurisdiction to it.

20. If any of these things is established, the order is coram non iudice and of no effect whatever. If however, the objection rests solely on the ground that the tribunal has erroneously found a fact which it was competent to try, the objection cannot be entertained.

21. See also the judgment of Mookerjee J. in *Chairman of Giridhi Municipality v. Suresh Chandra (1908) 35 Cal 859(Supra)* where the question is discussed at great length and the authorities are collected, and the recent decision of a Pull Bench of this Court in Second Appeal No. 90 of 1939 *Municipal Committee of Montgomery v. Sant Singh, Reported in AIR (1940) Lah 377(supra)*. For the mortgagors reliance was placed on the last paragraph of Sub-section (2) of Section 7 and Section 21 of the Act and it was contended that they specifically bar the jurisdiction of Civil Courts to go into matters decided by the Debt Conciliation Board. But

neither of these Sections affects the matter under consideration before us. In the last paragraph of Section 7(2) it is laid down that:

if any question arises in proceedings under this part of the Act, whether a person is a debtor or not, the decision of a Debt Conciliation Board shall be final.

22. This sentence appears after the definition of 'debtor' given in the earlier part of the Sub-section, which defines a 'debtor' as meaning a person who owes a debt and who possesses certain qualifications, namely that he earns his livelihood mainly by agriculture and is either a landowner, tenant etc. It is clear that this paragraph makes the Board the final judge as to whether a particular debtor possesses the qualifications required under the Section. It does not refer to an adjudication as to the nature of the transactions entered into by him, i.e. whether or not they are debts as defined in the Act. In other words, all that this Section provides is that if the Board had decided that the person concerned earns his livelihood in one of the manners mentioned in the Sub-section or that he has, or has not, lost his status for any of the reasons given in the "explanation," its decision cannot be questioned in a Civil Court.

23. Section 21 debars Civil Courts from entertaining suits (a) to question the validity of any procedure or the legality of any agreement made under this Act, or (b) to recover any debt in respect of which an agreement has been recorded in Section 17, or (c) to recover any debt which has been deemed to have been duly discharged under Sub-section (2) of Section 13. Admittedly, Clauses (a) and (b) are irrelevant to the cases before us; Clause (c) refers to suits to recover a "debt;" it has no applicability to suits relating to transactions like a "usufructuary mortgage" which, as already shown, does not create a "debt" as defined in the Act. In this connexion, reference may be made to *Shivdin v. Ramratan AIR (1937) Nag 259(Supra)*, *Kanhaiya Lal v. Govind Tukaram AIR (1938) Nag 203(supra)*, *Motiram v. S.S. Bhuramalsao*²⁶ and *Ram Lal v. Sheo Lal*²⁷ where similar provisions of the C.P. Debt Conciliation Act were held not to bar consideration by Civil Courts of matters decided by Debt Conciliation Boards, in excess, or in contravention, of the powers conferred on them by the Act. For the foregoing reasons, the second question must be answered in the affirmative, that an order passed by the Board, treating the amount secured on a usufructuary mortgage as a "debt" and declaring that it has been discharged for all purposes and all occasions, is ultra vires of the Board, and that Civil Courts are not debarred from entertaining the plea of the mortgagee that his mortgage is not affected by this order. With this expression of opinion on the questions of law involved, the cases are remitted to the Single Bench for disposal,

Monroe, J.

24. I agree entirely.

Skemp, J.

25. So do I.

²⁶(1936) 169 IC 268

²⁷(1936) 169 IC 323