

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Wood Renton.

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THE ATTORNEY-GENERAL v. PERERA.

D. C., Colombo, 24,032.

*Crown, bond in favour of—Conditional variation of terms of the bond—
Fulfilment of conditions—Burden of proof—Evidence Ordinance,
s. 106.*

The defendant's intestate, who was the assignee of the privilege to sell arrack and toddy by retail in the Kalutara District, entered into a bond dated December 8, 1903, to pay to the Crown the amount due, to wit, Rs. 143,668, in twenty-four monthly instalments.

Certain circumstances having been represented by the defendant's intestate to the Government, the Colonial Secretary wrote to him (document D 3), *inter alia*, as follows :—

- (a) The Government will accept from the renters, instead of the monthly instalment entered on the bond, payment at the rate of Rs. 4.50 per gallon for the quantity of arrack certified by the Excise Officers to have been issued during the month.
- (b) The difference between the amounts actually paid and the amounts of the monthly instalments as they appear on the bond will be carried forward as a debt due to Government by the renters.
- (c) It is not the intention of Government to recover this amount or any portion thereof if it is satisfied that the rent taken as a whole has been worked at a loss ; that the renters have adhered strictly to the Government regulations issued to them ; have acted honestly in their dealings with Government ; and that no arrack other than that issued under the supervision of the Excise Officers has been sold by the renters or persons in their employment or by others with their connivance.

The defendant when sued on the bond pleaded this letter as an agreement superseding the terms and conditions of the original bond, and alleged that the Crown had acted on the said agreement and was estopped from denying its validity. No evidence was led by either side at the trial.

Held, that the defendant's plea was not entitled to succeed, and that the plaintiff was entitled to judgment on the original bond.

Per HUTCHINSON C.J., on the ground that, although the letter amounted to an agreement, there is no evidence that the Government is satisfied that the conditions mentioned have been fulfilled.

Per WOOD RENTON J., on the ground that the letter did not amount to a binding agreement, or such a representation as could form the basis for a plea of estoppel.

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WENDT J. (in review).—There was no present and absolute waiver by the Crown of its right to recover the instalments. Assuming there was a conditional waiver, there was neither allegation nor proof by defendant that the condition had been fulfilled.

MIDDLETON J. (in review).—The letter of the Colonial Secretary must be construed as a declaration of the terms upon which the Government would work in carrying out an indulgence given to the renters in respect to their contractual obligations, and not as a hard and fast agreement, by which they would be legally bound. Assuming it to be a binding agreement, the onus was on the defendant to prove that the conditions were fulfilled.

ACTION by the Crown on a bond entered into by the defendant's intestate. The facts appear in the following judgment of the District Judge (Joseph Grenier, Esq.) (December 9, 1907):—

“ This is an action on a bond dated December 8, 1903, executed by the original defendant, who is now dead, the present defendant being the administrator of his estate, for the recovery of the sum of Rs. 28,553·98, being balance due in respect of the instalments for July, August, September, October, November, and December, 1904, and January and February, 1905.

“ The original defendant purchased the privilege of selling arrack and toddy by retail within the District of Kalutara for the term of two years from January 1, 1904, to December 31, 1905, and the bond now sued upon by the Attorney-General was executed to secure the payments stipulated for therein with reference to such purchase.

“ The defendant, in an answer which sets out the grounds of his defence very fully, denies his liability to pay anything in respect of the bond. His defence, stated in a few words, is that in consequence of the dislocation of the arrack trade in the year 1904, and the consequent loss to those engaged in the trade, which almost forced upon them the necessity of giving up the arrack farms, the Government, on representations being made to them, induced the defendant's intestate and other arrack renters to continue carrying on their trade by entering into an agreement with them, by which the original terms and stipulations of the conditions of sale were altered. It was alleged by the defendant that in pursuance of the new agreement the Government took possession of the arrack and godowns of the defendant's intestate and issued arrack to him, and agreed to accept from him, instead of the monthly instalments payable under the bond, payment at the rate of Rs. 4·50 per gallon for the quantity of arrack thus issued during each month. There was no oral evidence led before me by the parties, and the defendant entirely relied upon the documents which he produced and submitted in evidence, and which were admitted by the plaintiff.

“ It seems to me impossible to read these documents without coming to the conclusion that it was clearly the intention of Government to modify the terms and stipulations contained in the bond

as suggested by the defendant. All the documents must be read together in order to arrive at a right conclusion in regard to the attitude which Government intended to take up, and did actually take up, towards the defendant and other renters as a result of the momentary wave of temperance which appears to have passed over the Island in 1903. It seems to me that the agents of Government acted with great foresight in modifying the terms and conditions contained in the bond in regard to payment, as otherwise the results would have been disastrous, not only to the renters themselves, but to Government, which would have lost a very considerable amount of revenue by the threatened destruction of the arrack trade. In my opinion, document D 3, which is under the hand of the then Lieutenant-Governor, Sir A. M. Ashmore, estops the Government from making the present claim. Article 5 of that document states : ' It is not the intention of Government to recover this amount or any portion thereof if it is satisfied that the rent taken as a whole has been worked at a loss ; that the renters have adhered strictly to the Government regulations issued to them ; had acted honestly in their dealings with Government ; and that no arrack other than that issued under the supervision of the Excise Officers has been sold by the renters or persons in their employment or by others with their connivance.' Article 7 states precisely in what circumstances the new agreement would be terminated. Now, nothing has been laid before me by the plaintiff to justify his seeking to recover the original instalments stipulated for in the bond. Naturally, the defendant looks upon document D 3 as the sheet anchor of his defence, and I think rightly. I find, therefore, that the plaintiff, as representing the Government in this action, is estopped by the conduct of its agents from claiming more than Rs. 4·50 per gallon issued during the months August, 1904, to February, 1905.

" It was suggested rather than argued that Mr. Ellis, who was the Government Agent for the Western Province during the period in question, had no authority to deal with the defendant and to bind the Government in a matter of this kind. I think he had full authority by virtue of his position and powers, and that he ought to be considered as the duly accredited agent of Government in dealing with matters relating to arrack rents. Of Sir Alexander Ashmore's authority there can be no doubt or question.

" I decide all the issues in favour of the defendant, and dismiss the plaintiff's action with costs."

Document D 3 referred to by the District Judge was as follows :—

" Terms of the Understanding entered into with those Renters who are allowed to work their Rents on the Rs. 4·50 System :—

" 1. Government will accept from the renters, instead of the monthly instalments entered on the bond, payment at the rate of Rs. 4·50 per gallon for the quantity of arrack certified by the Excise Officers to have been issued during the month.

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" 2. The renters must comply with the instructions which may from time to time be given by Government with reference to the receipt of arrack, its issue from the stores. and the general conduct of the renting business.

" 3. The renters must pay to the Government Agents such amounts on account of the expenses of the Excise Officers as Government may decide on.

" 4. The difference between the amounts actually paid and the amounts of the monthly instalments as they appear on the bond will be carried forward as a debt due to Government by the renter.

" 5. It is not the intention of Government to recover this amount or any portion thereof if it is satisfied (1) that the rent taken as a whole has been worked at a loss; (2) that the renters have adhered strictly to the Government regulations issued to them; (3) have acted honestly in their dealings with Government; and (4) that no arrack other than that issued under the supervision of the Excise Officers has been sold by the renters or persons in their employment or by others with their connivance.

" 6. Government will also require to be satisfied that the accounts which must be submitted by the renter to establish the fact that the rent has been worked at a loss contain a genuine and *bona fide* account of the transactions which have taken place.

" 7. Government retains the right in case of gross dishonesty or repeated breaches of the regulations, or if Government believes that the renter is not dealing honestly, or that the rent is being worked at a profit, to terminate this agreement on one month's notice. The renter will then be placed in the position which he could have occupied had no agreement been made.

" 8. The renter has also the right similarly, on a month's notice, to terminate this agreement and resume his ordinary position as renter.

" 9. If a renter carried on his rent to its proper period of termination, Government will restrict the claim that can be made upon him on account of the difference between the payments made on the Rs. 4·50 system and the instalments due under the bond to the amount of his security, that is, to the sum payable for four of the regular monthly instalments of the rent.

" November 2, 1905.

A. M. ASHMORE."

The Attorney-General appealed against the judgment of the District Judge.

Walter Pereira, K.C., S.-G., for the Crown.

Bawa, for the defendant, respondent.

Cur. adv. vult.

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This is an action by the Attorney-General against the administrator of the estate of the late Chas. Perera Wijeratne claiming Rs. 28,533·98 as the balance due to the Government as the rent for seven months from August, 1904, to February, 1905, inclusive, in respect of the privilege to sell arrack and toddy by retail in the Kalutara District. The Government sold the privilege for the years 1904 and 1905 to Cornelis Perera, who, with the sanction of the Government, assigned it to Chas. Perera, who executed a bond to pay the rent to the Crown.

The defence is a denial of the debt. The defendant says in his answer that, owing to the dislocation of the arrack trade in 1904, and the consequent loss to the renters, Chas. Perera and other renters made representations to the Government, and the Government induced them to work their farms by entering into an agreement by which the original conditions of the terms of sale were altered, and, *inter alia*, the Government took possession of the arrack and godowns of the renter Chas. Perera and issued arrack to him, and agreed to accept from him, instead of the monthly instalments payable under his bond, payment at the rate of Rs. 4·50 per gallon for the arrack thus issued for sale during the month; that the Auditor-General, Mr. Ellis, with the sanction of the Government, agreed to accept certain payments which the renter had made in full payment of the instalments for July, and directed him to pay for August Rs. 2,011·50, being the amount due at the rate of Rs. 4·50 per gallon for the arrack sold during that month, which the renter accordingly paid; that in terms of the said agreement the renter carried on business of the arrack farm, and in all respects conformed to the terms of the agreement, and made payments at the said rates up to March 1, 1905; and that at the termination of the period of the said rent the accounts between the Government and him in respect of said arrack rent were finally settled by the Government, setting off Rs. 23,944·84 against the instalments due by him for the last four months of the said rent.

The plaintiff, in reply, denied that accounts were settled, or that Mr. Ellis agreed with the renter as alleged, or that he had any right to do so; he said that on the representation made by the renters of alleged losses in consequence of the temperance movement the Government, as a measure of temporary relief, signified to the defendant's intestate its readiness to accept at the rate of Rs. 4·50 per gallon of arrack sold, and did accept at that rate, subject, however, to the express provision that that arrangement was in nowise to be regarded as a final settlement of accounts, but that the difference between the amounts actually paid and the amounts of monthly instalments as they appeared on the bond should be carried forward as a debt due by him to the Government, and that such difference was so carried forward.

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The following issues were agreed upon :—

- (1) Was the agreement in the bond dated December 8, 1903, modified by the letters of September 10, 1904, from the Government Agent, Western Province, and the " Terms of Understanding " signed by Sir Alex. M. Ashmore dated November 2, 1904 ?
- (2) If so, can the Government recover more than Rs. 4·50 per gallon during the period August, 1904, to February, 1905 ?
- (3) Did Mr. Ellis accept Rs. 1,250·16 in settlement of the instalments due for July, 1904 ?
- (4) Did Mr. Ellis require the defendant to pay only Rs. 2,011·50 in discharge of the defendant's liability for the month of August, 1904 ?
- (5) Had he no right to agree to the above abatements ?
- (6) Did the Government take possession of the arrack and godowns of the defendant's and issue arrack to the defendant's intestate, and agree to accept, and actually accept, from him Rs. 4·50 per gallon of arrack thus issued, instead of the monthly instalments payable under the bond ?
- (7) Is the Government by reason of the premises and by the conduct of its agents estopped from claiming more than Rs. 4·50 per gallon issued during the months August, 1904, to February, 1905 ?

And on the same day the Judge recorded that the onus was on the defendant, and that his counsel " opens defendant's case and reads in evidence D, D 1, D 2, D 3 (5th paragraph), D 4, D 5, D 6, which are all admitted by Mr. Loos," the plaintiff's counsel. The further hearing was then adjourned, and when the case next came on, he records that the defendant's counsel " calls no further evidence, relying on the documents already read in evidence," and that the plaintiff's counsel addressed the Court and read in evidence the conditions of sale. No further evidence was taken.

D is a letter addressed to the renter by Mr. Driberg for the Government Agent dated September 10, 1904, stating that the Government had decided to consider the grant to him of a remission of his current rent from August 1, 1904, and that, " in order to discover a satisfactory basis from which the amount of remission could be calculated, it has been decided that you should pay Rs. 4·50 a gallon for each gallon sold ; but it must be distinctly understood that this payment is not to be considered a final settlement of your liability to Government, the balance of each month, after deduction of the amount recovered at the rate of Rs. 4·50 per gallon, will be

carried forward as a debt to Government, and it will be a matter for future consideration as to what proportion of the debt will be recovered." It then states the manner of checking the amount of sales to which the renter was to conform.

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D 1 is a slip of paper with a statement on it that "W. J. B. Charles, the Kalutara Renter, must pay for August" so much; "it must be paid by the end of this month." Signed Fras. R. Ellis, dated September 19, 1904.

D 3 is a document signed "A. M. Ashmore," dated November 2, 1904, headed "Terms of the Understanding entered into with those Renters who are allowed to work their Rents on the Rs. 4·50 System." Paragraph 1 is "Government will accept from the renters, instead of the monthly instalment entered on the bond, payment at the rate of Rs. 4·50 per gallon for the quantity of arrack certified by the Excise Officers to have been issued during the month." Paragraph 4: "The difference between the amounts actually paid and the amounts of the monthly instalments as they appear on the bond will be carried forward as a debt due to Government by the renters." Paragraph 5: "It is not the intention of Government to recover this amount or any portion thereof if it is satisfied that the rent taken as a whole has been worked at a loss; that the renters have adhered strictly to the Government regulations issued to them; have acted honestly in their dealings with Government; and that no arrack other than that issued under the supervision of the Excise Officers has been sold by the renters or persons in their employment or by others with their connivance." Paragraph 7 says that the "Government retains the right in case of gross dishonesty or repeated breaches of the regulations, or if Government believes that the renter is not dealing honestly, or that the rent is being worked at a profit, to terminate this agreement on a month's notice." Paragraph 8 gives the renter power to terminate it on one month's notice. And the last, paragraph 9, is that "if a renter carries on his rent to its proper period of termination, Government will restrict the claim that can be made upon him on account of the difference between the payments made on the Rs. 4·50 system and the instalments due under the bond to the amount of his security, that is, to the sum payable for four of the regular monthly instalments of rent."

D 4 is an undated notice from the Government Agent to the renter that the Rs. 4·50 system will be withdrawn from March 1, 1905. No reason for it is given, but it does not appear that the renter objected to it.

The District Judge held that the Government was estopped by the action of its agents from claiming more than Rs. 4·50 per gallon issued during August, 1904, to February, 1905; he said that he decided all the issues in favour of the defendant and dismissed the action.

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The Solicitor-General, in opening the appeal, said that there had been a misunderstanding between the District Judge and the plaintiff's counsel with regard to the admission of the documents put in by the defendant, and he asked us to read affidavits in support of that contention, and also a letter written by the District Judge to the Registrar in forwarding the appeal to this Court. We decided, however, to hear the appeal first on the record as it stands, and I have not looked at the affidavits or the letter. He also contended that D 1 signed by F. R. Ellis does not purport to be, and is not shown to be, signed by a person in authority; that there is no evidence who F. R. Ellis was; and that D 3 signed A. M. Ashmore does not purport to be, and is not shown to be, signed by a person in authority; that there is no evidence who A. M. Ashmore was, or that D 3 was addressed to, or was intended for, Chas. Perera in respect of the Kalutara rents.

The defendant's answer says that "Mr. Ellis" was the "then Auditor-General," and the District Judge says in his judgment that Mr. Ellis was the Government Agent for the Western Province and that A. M. Ashmore was the Lieutenant-Governor. It is curious that documents like these, if they were signed by an official in his official character, should not state the fact. The admission of them by the plaintiff was only an admission that they were authentic, that is, that they are what they purport to be; and they do not purport to be public or official documents, or to be signed by officials.

D 1 looks like a note made by F. R. Ellis for his own information on a half sheet of paper, and D 3 bears no office number or marks. The letters of September 10, 1904, referred to in the first issue, were not put in evidence, but D 3 is doubtless the "Terms of Understanding" referred to in that issue. On the record as it stands I think the plaintiff is entitled to judgment, because there is no evidence of the official character or authority of D 1 or D 3. We decided, however, to hear the appeal on the assumption, on which I think both parties acted at the trial, that the F. R. Ellis who signed D 1 was Auditor-General as the defendant says, and that A. M. Ashmore was the Lieutenant-Governor. If the case should go further, it will be for the Full Court to decide whether the defendant should not be allowed, if he should ask for it, to prove the official character and authority of the signatories, and in that case whether the plaintiff should not be allowed to show, as the Solicitor-General says he can, that D 3 was not an agreement with Chas. Perera in respect of the Kalutara rents.

I cannot agree with the District Judge that there is any estoppel. The question is whether upon the admitted facts and documents the Government is debarred by an agreement from recovering the arrears due on Chas. Perera's bond.

The defendant must rely on paragraph 5 of D 3. On that two questions arise: Is the statement that "it is not the intention of the

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Government to recover" if a certain condition is fulfilled the same thing as an agreement that it shall not recover if that condition is fulfilled? And if it is an agreement, can the Government recover when there is no evidence that the condition was fulfilled? My brother Wood Renton thinks that it is not an agreement; and certainly "I do not intend" has not unusually the same meaning as "I will not," and looks as if the writer intended not to bind himself. But I think it would be understood by the renter as a promise that the Government will not do that which the writer says it does not intend to do; and the writer must have known that the renter would so construe it and would act upon the faith of it. I think it is an agreement. But I must answer the second question in the affirmative. There is no evidence that the Government is satisfied that the conditions mentioned have been fulfilled, and the very fact of this action being brought is strong evidence that the Government is not so satisfied. No doubt it is difficult for the defendant to show that the Government is satisfied, but it is impossible; and he was accepting an indulgence from the Government, and he accepted it on these terms. He owes a debt; his creditor says he will not sue for it if a certain condition is fulfilled; when the creditor sues for it, it is for the debtor to show that the action will not lie because the condition has been fulfilled. An agreement by the creditor not to demand payment of the debt due to him if such and such events happen is a very different thing from an agreement that a debt shall become due if those events happen.

As to the 3rd and 4th issues, if "instalments" and "liability" mean instalments and liability under the bond, they must be answered in the negative. There is no evidence on the 5th issue, and it must be answered in the negative—he had no right. The answer to the 6th issue is that the Government accepted Rs. 4·50 per gallon on the terms of the agreement contained in the documents. The 7th issue must be answered in the negative.

In my opinion the plaintiff is entitled to recover the arrears of rent sued for, except that in accordance with paragraph 9 of D 3 he can only recover the amount of four monthly instalments of the rent, that is, Rs. 23,944·64. The judgment of the District Court should be set aside, and the judgment entered for the plaintiff for Rs. 23,944·64 and the costs in both Courts.

WOOD RENTON J.—

This is an appeal by the Attorney-General against a judgment of the District Court of Colombo dismissing an action brought by him against the administrator of the estate of the late Mr. Chas. Perera Wijeratne for the recovery of the sum of Rs. 28,533·98 in respect of a portion of the purchase money of the arrack rents within the District of Kalutara between the months of July, 1904, and February, 1905. The material facts are these. By deed of May 4,

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1903, one Cornelis Perera purchased from Government for the sum of Rs. 143,668, payable by twenty-four monthly instalments, the privilege of selling arrack and toddy within the District of Kalutara for two years from January 1, 1904, to December 31, 1905.

Mr. Wijeratne was the assignee under a deed of transfer dated December 8, 1903, of Cornelis Perera's rights during the year 1904; the arrack trade was injuriously affected by a temperance movement which swept over the Island, and on September 10 in that year Government, in pursuance of a policy adopted towards other arrack renters, agreed in a letter (D) addressed to the respondent's intestate to a temporary modification of the original contract with his assignor. Paragraph 2 of that letter is in the following terms:—
“ In order to discover a satisfactory basis from which the amount of remission could be calculated, it has been decided that you should pay Rs. 4.50 a gallon for each gallon sold; but it must be distinctly understood that this amount is not to be considered a final settlement of your liability to Government; the balance of each month, after deduction of the amount recovered, at the rate of Rs. 4.50 per gallon, will be carried forward as a debt to Government, and it will be a matter for future consideration as to what proportion of the debt will be recovered.”

By way of consideration for this temporary remission of rent, and no doubt as a means of determining the necessity for its continuance, fairly wide powers of checking the arrack renter's accounts and of controlling his stores were conferred on Government. If this agreement had stood alone, it is clear that the Attorney-General was entitled to sue, as he has sued, for the difference between the contract price and the rent paid under the remission stipulated for in the letter of September 10, 1904, without assigning any reason for the enforcement of his claims. But the respondent relies on a document of later date (November 2, 1904, D 3) alleged to be signed by Mr., afterwards Sir, Alexander Ashmore on behalf of the Government, and entitled “ Terms of the Understanding entered into with those Renters who are alleged to work their Rents on the Rs. 4.50 System ” It was admitted by Solicitor-General that this document reached the hands of the respondent's intestate, and, if it contained an offer or inducement which acceptance by any member of the class to whom it was addressed would convert into a contract, it would clearly bind the Government for the purposes of the present case. It may be desirable here at once to eliminate from the discussion of what is, in my opinion, the real issue before us, several incidental questions of procedure that were raised at the argument of this appeal. No *visà voce* evidence was adduced on either side at the hearing. But the learned District Judge ruled that the onus of making out the defence raised in the answer, viz., such a modification of the original terms of the contract assigned to the respondent's intestate as amounted to an abandonment by

Government of any claim to the balance of the purchase money now sued for, rested on the respondent. The respondent's counsel thereupon "read in evidence" the following documents, the above-mentioned letters of September 10, 1904 (D), and November 2, 1904 (D 3), a receipt dated September 14, 1904 (D 1), and signed "F. R. Ellis," for money alleged to have been accepted by Government for rent paid by the respondent's intestate on the reduced scale, and various other documents (D 2, D 4, D 5, and D 6), to which it is unnecessary to refer particularly. A journal entry follows: "All admitted by Mr. Loos," who was then Acting Solicitor-General, and who appeared for the Crown. On a later date to which the hearing was adjourned, the respondent's counsel stated that he called no further evidence, "relying on the documents already read in evidence"; and some days later the Court gave judgment dismissing the appellant's action, on the ground that the Crown was estopped from asserting its present claim by Mr. Ashmore's letter of November 2, 1904.

On the hearing of this appeal the Solicitor-General sought to tender in evidence a letter by the District Judge and certain affidavits by the counsel who appeared in the Court below for the Crown as to the circumstances attending, and the meaning of, Mr. Loos's admission of the above-mentioned documents D 1 to D 6, and he contended that, in any event, the documents in question ought to have been connected by oral evidence with the officials from whom they purported to emanate, *e.g.* by proof of the official capacity and authority of "F. R. Ellis" in the case of D 1 and of "A. M. Ashmore" in that of D 3. We did not receive, and I have not myself looked at since the argument, the supplementary evidence tendered by the Crown, and it is unnecessary to decide the question whether, after the admission by Mr. Loos, any objection to the sufficiency of the proof of any of the documents D 1 to D 6 would, under section 114 of the Civil Procedure Code, be open to the Crown. The Solicitor-General also urged that it was the duty of the respondent to have adduced evidence at the trial showing that he had satisfied the conditions which, according to his interpretation of D 3, released him from any liability to pay the balance of the purchase money now sued for. It is certainly to be regretted that no evidence on this point was called. But if this were the only objection that could be urged against the respondent's position, I am not at present prepared to say, in view of the unsatisfactory manner in which the case was conducted on both sides in the District Court, that it would constitute a sufficient ground for the dismissal of the action or for any order except one directing further inquiry. The case seems to me to be, however, determinable on a broader and more solid ground. The respondent can only meet the appellant's claim by contending that a definite undertaking by Government not to claim the balance now in question is contained in paragraph 5

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of D 3. That paragraph is as follows :—“ It is not the intention of Government to recover this amount (*i.e.*, the balance) of any portion thereof if it is satisfied that the rent taken as a whole has been worked at a loss ; that the renters have adhered strictly to the Government regulations issued to them ; have acted honestly in their dealings with Government ; and that no arrack other than that issued under the supervision of the Excise Officers has been sold by the renters or persons in their employment or by others with their connivance.” On its literal construction, taken in conjunction with the other clauses in the same document and with the terms of the letter of September 10, 1904, I am unable to regard this paragraph as constituting either an agreement on the part of Government or such a representation as could form a basis for a plea of estoppel. I think it is merely a declaration of a present intention held out as an encouragement to the renter, but revocable at any moment. The language in which it is couched—“ it is not the intention of Government ”—stands in marked contrast to the words “ Government will accept,” in which, in clause 1 of the same document, a definite undertaking to accept the modified rent is given. The conditional clause “ if it is satisfied ” tells strongly against the view that anything in the nature of a contract was contemplated. If Government, on its claim being met with a plea under paragraph 5, had alleged that it was not satisfied, could a Court of Law have put it to the proof, or inquired into the adequacy, of the grounds of its dissatisfaction ? The tenor both of the letter of September 10, 1904 (D), and of the other clauses in D 3 points in the same direction. In the former a distinct intimation is given to the renter that the remission of rent is not an extinction of his liability, but that the difference between the modified and the contract price will be carried forward as a debt due to Government (clause 2). In the latter this provision reappears (clause 4) ; and, while conditions are inserted entitling Government, in case of gross dishonesty, &c. (clause 7), or the renter without any reason assigned (clause 8), to terminate the system of remitted payments on a month’s notice, the only agreement with reference to the balance of the debt is the undertaking by Government in clause 9 to restrict its claims under that head, if the renter carried on his rent to its proper period of termination, to the sum payable for four of the regular monthly instalments. It is in this last provision and not in paragraph 5 that, in my opinion, the reference in paragraph 2 of the letter of September 10, 1904, to a “ future consideration as to what proportion of the debt will be recovered,” finds its fulfilment.

I would set aside the judgment under appeal, and enter judgment for the appellant in the terms proposed by my Lord, the Chief Justice, with all costs here and below.

Appeal allowed.