

**MEMORANDUM  
OF THE GOVERNMENT OF SIKKIM**



**CLAIMS IN RESPECT OF  
DARJEELING.**

# MEMORANDUM OF THE GOVERNMENT OF SIKKIM.

---

## Claims in respect of Darjeeling.

---

Governor General's  
Minute of 1830.

1. The reasons which led the British Government to seek from the Ruler of Sikkim the grant of the territories comprised in the Darjeeling area are recorded in the Minute of the Governor General dated the 17th June, 1830. The following extracts clearly show the intention of the Governor General: "The reports of Captain Lloyd, Captain Herbert and Mr. Grant unanimously concur in reporting *Darjeeling to be peculiarly qualified for a Sanatorium for the Lower Provinces* ..... it is unnecessary to advance any other reason for carrying the measure into effect than the great many of human life and the consequent saving of expense that will accrue both to individuals and the State. The immediate outlay of money that this measure might require would be the making of a convenient communication to the proposed site of the Sanatorium and the erecting of barracks for a *certain number of European invalids.*" The Governor General was, therefore, of the opinion that the desire of the British Government should be communicated to the Sikkim Raja and, if the Raja was willing to give his assent, the terms of the grant should be ascertained. He also suggested "*a compensation in money the most convenient to us in every respect*". (Political Consultation. 17th October, 1833. No. 1.)

Views of the  
Governor General's  
Council.

2. The Governor General's proposal was strongly opposed by the members of his Council. Sir Charles Metcalfe was of the opinion that the Raja of Sikkim would not be agreeable to the grant. He further stated that "his aversion may be subdued by the consequences of refusal, but that is an influence, which it would not be fair to exercise". He also suggested "that in the overture to be made to the Rajah of Sikeem, the gentleman employed be instructed to apprise the Raja that he is perfectly at liberty to decline making the cession, if he does not consider his own interests promoted by acceding to it; or in other words no attempt be made to awe the Rajah into acquiescence or to overcome his reluctance otherwise than by *offers of advantages equivalent in his mind to the importance of the cession.*" Mr. William Bayley, another member of the Governor General's Council, was of the same opinion. He also said: "*I think that the cession should not be ultimately insisted upon unless the terms offered as an equivalent to the Siccim Rajah should be really satisfactory to him.*" (Ibid. Nos. 2 and 3).

Revival of the  
proposal, 1833.

3. The proposal to establish a Sanatorium at Darjeeling for European servants and subjects of the East India Company was dropped "in consequence of the unfavourable opinion entertained by Sir Charles Metcalfe and Mr. Bayley". It was, however, revived in 1833 by the Governor General, who suggested that an officer "should be deputed to the Raja of Sikkim with the view of proposing to him *the cession of Darjeeling and arranging with him for the equivalent to be made.*" Ultimately this proposal was accepted, and Major Lloyd, who was employed in adjusting some differences respecting the Sikkim boundary, was "deputed to

negotiate with the Rajah of Sikkim for the *cession of Darjeeling in return for an equivalent in land or money*". (Ibid. No. 4 and Political Consultation. 23rd January, 1835. No. 1.)

Instructions to  
Governor General's  
representative.

4. In the letter of instructions issued to Major Lloyd, the Secretary to the Government laid emphasis on the following points:-

- (a) *that the cession of Darjeeling was to be in return for "such equivalent either in land or money as you may deem reasonable"; and*
- (b) *"that the superiority of the climate of Darjeeling and its consequent fitness for a Sanatorium are the only reasons which induce us to wish for its possession."* (Ibid. No. 3).

The following extracts from the letter of the 11th February, 1835, from the Governor General to the Raja of Sikkim made the position clear beyond doubt:- "I have deputed Major Lloyd, an officer of much ability and experience, and one in whom I have great confidence, to propose to you the *cession of Darjeeling to the British Government offering to you such an equivalent as may seem to both parties to be reasonable*. I am informed that the abovenamed place yields you no revenue, nor it is any part of the object of the British Government to derive pecuniary profit from its possession. *It is solely on account of the climate that the possession of the place is deemed to be desirable, the cold which is understood to prevail there being considered as peculiarly beneficial to the European constitution when debilitated by the heat of the plains.*" (Political Consultation. 11th February, 1835. 111).

Negotiations  
between the  
Governor General's  
representative and  
the Raja of Sikkim.

5. Details of the negotiations conducted by Major Lloyd with the Raja of Sikkim for the cession of the Darjeeling area are given in his letter of the 9th March, 1835, to the address of the Secretary to Government, Political Department. The following facts clearly emerge from this letter:-

- (i) When Major Lloyd met the Raja for discussions, the Raja asked for the retrocession of Dabgong which had formerly belonged to him. Major Lloyd met this request by saying that he had received orders from the Governor General to ask the Raja "to cede Darjeeling to the British Government *in exchange for land in the plains or for a sum of money*, explaining at the same time that it was on account of the cold climate that Government wishes to have the place as a resort for sick persons who could not recover in the hot climate of the plains, *instancing the necessity to us, natives of a cold climate, of a cool place to resort to.*"
- (ii) The Raja of Sikkim handed over to Major Lloyd a statement of his wishes, and said that "*if his requests were complied with he from friendship would give Darjeeling to the British Government.*" This statement contains the following pertinent remarks: "*Also if from friendship Debgong from Ahma Deggee north be given to me, then my Dewan will deliver to Major Lloyd the grant and agreement under my red seal of Darjeeling that he may erect houses there which I have given in charge of the said Dewan to be so delivered.*"

The Raja agrees subject to conditions.

6. Major Lloyd was not satisfied with the form of the deed which the Raja had instructed his officers to hand over to him “as soon as his (the Raja’s) request be complied with”. Major Lloyd, therefore, wrote to the Raja enclosing a copy of what he conceived the Raja ought to write as “a grant of the place” and requesting him to substitute this for the one the Raja had delivered to his officers. This draft was signed by the Raja of Sikkim and returned to Major Lloyd. Major Lloyd, herefore, wrote to the Secretary to Government, Political Department, on the 15th of March, 1835 “*that the only thing which now remains to be done to fulfil the conditions of obtaining the cession of Darjeeling, is to give the Raja Dabgong in exchange for it, and oblige Rammoo to account for the revenues of the Morung for the last two years*”. (Political Consultation. 6th April, 1835. Nos. 100 and 102).

Conditions not accepted by the Governor General.

7. The conditions attached by the Raja of Sikkim to the grant of Darjeeling were not, however, acceptable to the Governor General. In his letter of the 6th April, 1835, the Secretary to the Government wrote as follows to Major Lloyd: “It appears that the Sikkim Rajah has annexed two conditions to the cession of Darjeeling, first one granting to him Dabgong in exchange for it and, secondly, on making Rammoo Purdhan account for the revenue of Morung for the last two years; with these conditions it appears to the Governor General in Council to be impracticable to comply.” (Ibid. 104). Major Lloyd wrote in reply that as the Raja of Sikkim had been offered land in the plains or a sum of money in ex-change for Darjeeling, instructions should be given to him as to how much land or what amount of money he should offer. The Governor General’s instructions were as follows: “If there be any land belonging to the British Government in the neighbourhood of Sikkim, which is at pre-sent entirely waste, the Governor General in Council would not object to it being transferred to the Rajah in exchange for Darjeeling and you are requested to state whether you are aware of any such land which the Rajah would be content to accept as an equivalent or if there be no land of this description in the neighbourhood, you will state what would in your opinion be considered by the Rajah as a sufficient pecuniary com-pensation for the cession of Darjeeling.” (Political Consultation. 4th May, 1835. Nos. 103 and 104). Major Lloyd’s reply was that he was not aware of any waste land in the neighbourhood of Sikkim but there was a small strip of forest on the west bank of the Teesta but he did not know whether the Raja of Sikkim would be content with it. As regards “suffi-cient pecuniary remuneration”, he wrote as follows: “I find it difficult without referring to the Rajah himself, to form such an opinion, but Go-vernment might decide on what should be offered, by the present value of money and the monthly or annual amount, which it should feel dis-posed to appropriate, to the establishment of a Sanatorium. *The trust I have demanded from the Rajah, is about 30 miles long from 6 to 10 broad, and as capable of cultivation as any part of the hills*; if this be valued at Rs. 500 a month, or 6000 per annum, the present value of money would make the cost 120,000, or whatever monthly sum might be considered proper, can be estimated in the same manner; for instance, 100 Rupees a month 24,000 Rupees. *The Govern-ment would be reimbursed by the rent of the land*. I can only say, that could I as an individual purchase the land, and had I the money I should be glad to give 100,000 Rupees for it.” (Political Consultation. 15th June, 1835. No. 150).

8. A curious development then took place. Major Lloyd suddenly realised that he had received from Raja of Sikkim the deed of cession, as drafted by him, subject to compliance with certain conditions, and he had not communicated this fact to the Government. Therefore, on the 31st of October, 1835, he wrote to the Secretary to Government, Political Department that he had already received the deed of cession, but as he had been informed that Government would not comply with the Raja's requests, he wrote and told the Raja and offered to return the deed. His words are: "Under these circumstances, although I had received the grant of Darjeeling, if in consequence of his not obtaining these two requests, he felt at all indisposed to cede it, I would forthwith return the paper to him; if, however, from friendship to the British Government, he still thought proper to give Darjeeling, I requested he would say so." (Political Consultation. 9th November, 1835. No. 55).

British Government  
take over possession  
of Darjeeling.

9. The Raja's reply was a curious one. "It is certainly a reply to more than one letter and on different subjects, the main subject being the boundary dispute and the non-arrival of the Vakils, and the subordinate subject being the grant of Darjeeling. And on this point the whole purpose of what the Raja says is that having given the grant in 1835, he could not depart from it." (Memorandum of the Under Secretary to the Government. September, 1846). Major Lloyd understood this to mean "that the Raja made the grant freely since he mentions no conditions whatsoever and seems to regret that he had been misunderstood." Major Lloyd also stated that the Sikkim Vakils assured him that this was the Raja's intention. Major Lloyd, therefore, forwarded the deed to the Government and suggested that a letter of acknowledgement and a handsome present might be sent to the Sikkim Raja. Thus the British Government took possession of Darjeeling area. On the 8th February, 1836, the Governor General also wrote to the Raja of Sikkim: "Major Lloyd has informed me that out of friendship to the British Government, you have made an unconditional grant of Darjeeling with a small tract about it, for the purpose of being used as a sanatorium for the servants and subjects of the Company, and the Major has forwarded to me the deed of gift executed by you in the name of the company. I am much obliged to you for this proof of your friendship and accept the land on behalf of the Company for the purpose mentioned in the grant." (Political Consultation. 8th February, 1836. No. 88).

The Raja's  
protests.

10. Repeated letters were received from the Raja of Sikkim complaining that the conditions subject to which he had agreed to grant Darjeeling had not been fulfilled. As the British Resident at Darjeeling pointed out in his letter of the 20th March, 1841, to the Secretary to the Government, "Dabgong was the original exchange sought for by the Rajah from the Colonel Lloyd and has been again and again repeated in letters to the Governor General and myself." In November, 1839, the Raja wrote as follows to the British Superintendent at Darjeeling: "I beg to inform you that in giving Darjeeling for a sanatorium, I did not define its boundaries. Colonel Lloyd asked me to define its limits and promised that whatever money I should desire in return should be granted, that my territory should be extended west to the Tambar river; that Rammoo Perdhan and his brothers should be delivered over to me and that the defect in my revenues in their hands should be made good. He

also promised that whatever other matters of business might have with him should be satisfactorily performed. *On this account I ceded Darjeeling and a portion of the Jumi Pahar country but as yet I have received nothing in return for Darjeeling nor have my other affairs been well arranged.*" (Political Consultation. 12th February, 1840. No. 102). Similar in nature was the statement contained in the Raja's letter to the Governor General of the 12th February, 1840: "In friendship I ceded Darjeeling and soon after six years ago Colonel Lloyd wrote me requesting that *I would define the limits of the Darjeeling tract and on doing that in return if I solicited Your Lordship I should have whatever land or money I required.* I accordingly sent a sketch of the Darjeeling tract duly defined; I do not know if you have received it but *I have as yet had nothing in return from Your Lordship.* My country is a small one. I should like to have some land in exchange for Darjeeling." (Ibid. No. 103).

British Government agree to annual payment.

11. As a result of these protests, the British Government authorised their representative at Darjeeling to make to the Raja of Sikkim an offer of Rs. 3,000 per annum as compensation. At the same time the Governor General wrote as follows to the Raja: "I am very anxious to promote your welfare and have, therefore, authorised Dr. Campbell to arrange for paying you annually a sum far exceeding any profit which you could ever have expected from Darjeeling." The Raja accepted the offer with great reluctance. He wrote thus to the British Representative: "The Company's territory is very extensive and it should not be difficult to give me some land in exchange for Darjeeling. The offer of Rs. 3,000 annually in exchange for Darjeeling has vexed me but out of the friendship I bear to the British Government and which is very important to me, I agree to take Rs. 3,000 annually in exchange for the Darjeeling tract from the time that Darjeeling was made over to the British Government to this time." The Raja at the same time suggested that the annual payment might be increased. In November 1846, the annual payment was raised to Rs. 6,000 and the Secretary to the Government wrote as follows to the Superintendent at Darjeeling: "The compensation of Rs. 3,000 per annum regarded as compensation for loss sustained by the Rajah in ceding Darjeeling was most liberal but it cannot be regarded as an equivalent of the value of the place for the British Government. The President in Council is, therefore, prepared to raise the amount of the annual payment to the Rajah on account of the cession to Rs. 500 per mensem or Rs. 6,000 per annum." This compensation was raised to Rs. 9,000 per annum in 1868 and to Rs. 12,000 in 1874.

The grant not unconditional.

12. From the fore-going account it is clear that whatever was granted to the British Government was subject to compliance with the two requests made by the Raja at the time of the negotiations with the representative of the British Government. That the grant was not unconditional was well known to the authorities of the British Government at the time. For instance, the Under Secretary to the Government in his memorandum of September, 1846, wrote as follows: "It is proper to pause for an instant, and consider the importance of this conversation. What was the impression likely to be left on the Rajah's mind, he had made a request which was met by a request of a similar kind on the part of the British Agent; he had asked for a tract of country which had once belonged to him and the Agent replied by asking for a tract which his

Government desired to have. *Could the impression on the Rajah's mind be otherwise than that if he conceded, the Agent would concede and that if he would give Darjeeling, he should get Dabgong?*" The contention of the Rajah that the grant was conditional is also evident from the repeated complaint made by him in respect of the non-compliance of his requests. The British Government's agreement to pay an annual rent for the ceded tract was clearly a belated recognition of the fact that the grant was conditional. The following extract from letter No. 902 dated the 3rd of November, 1846, from the Secretary to the Government to the British Resident at Darjeeling clearly bears out this contention: "Now however that the Rajah has declared his disappointment at not having any substantial mark of our favour a clue is found to his past conduct - nor was the Rajah's disappointment otherwise than natural, the tenor of Major Lloyd's conversation with him at the interview reported in a letter from that officer, dated 9th March 1835, having been such as to raise expectations in the Rajah's mind that *if Darjeeling were ceded some equivalent or other would be granted in exchange.*"

The Deed of Cession.

13. The original deed executed by the Raja of Sikkim is in the Tibetan language. It was translated by Major Lloyd into English and reads as follows: "That health may be obtained by residing there, I from friendship make an offering of Darjeeling to the Sahib (Governor General), 1891, 19th Maug." (See Political Consultation. 6th April, 1835, No. 100). The revised deed, as drafted by Major Lloyd, is also in the Tibetan language. An English translation of the document was made under the orders of the British Superintendent at Darjeeling and reads as follows: "The Governor General having expressed his desire for the possession of the Hill of Darjeeling, on account of its cool climate for the purpose of enabling the servants of his Government, suffering from sickness, to avail themselves of its advantages; I, the Sikimputti Raja, out of the friendship to the said Governor General hereby present Darjeeling to the East India Company, that is all the land south of the Great Rungeet Rivers, east of the Balasun, Kabail, and Little Rungeet Rivers, and west of the Rungus and Mahanuddi Rivers." This is the document under which the British Government hold possession of the Darjeeling area.

How the Deed is to be interpreted.

14. The purpose of the interpretation of an inter-statal transaction, whether a contract or a unilateral act, consists in the ascertainment of its meaning, i.e. the intention of the contracting party or parties concerned. According to the Permanent Court of Arbitration in the case of the *Island of Timor*, "we must look for the real and harmonious intention of the parties when they bound themselves." The Permanent Court of International Justice has laid down in the *Mosul Case* (Series B. 12. Advisory Opinions) the cardinal rule of interpretation that the intention of a contracting party must, in the first place, be ascertained from the wording of the document in question. And words, as Accioly rightly points out, must be interpreted in their "usual and proper" sense.\* Judge Anzilotti, now the President of the Permanent Court of International Justice, and Judge Huber have held that "when the wording of a treaty is clear its literal meaning must be accepted as it stands, without limitation or extension". (*The Wimbledon Case*. A. 1. p. 36). It is also an accepted rule of interpretation that the attitude subsequently adopted

---

\* *Tratado de Direito Internacional Publico*. Vol. II pp. 460-464.

See also Bello, *Principios de Derecho Internacional*. Vol. II pp. 232-290.

by the parties is relevant to the extent to which it may throw light on the intention of the parties. It is equally admitted that the rule of restrictive interpretation must be applied in cases of contractual limitations of State sovereignty or of abandonment of rights derived from national sovereignty. (Vide Judgement of the Permanent Court of International Justice in the case of *German Interests in Polish Upper Silesia*. A. 7. p. 50 et. seq.). Thus, in the case of the *Radio Corporation of America v. National Government of China* (American Journal of International Law. 30 (1936), p. 535) the Board of Arbitrators stated the rule as follows: "As a sovereign Government, on principle free in its action for the public interest as it sees it, it cannot be presumed to have accepted such a restriction of its freedom of action, unless the acceptance of such restriction can be ascertained distinctly and beyond reasonable doubt. .... It is a correct rule, known and recognised in common law as well as in International Law, that *any restriction of a contracting Government's rights must be effected in a clear and distinct manner.*" The decision of the Permanent Court of International Justice in the case of *the Free Zones of Upper Savoy and the District of Gex* (A/B. 46. p. 167) is equally clear and emphatic on this point.

The Deed did not convey powers of sovereignty.

15. Applying these rules of interpretation to the deed of cession under which the British Government hold possession of the Darjeeling area, the conclusion becomes irresistible that the deed did not purport to grant to the British Government the rights of sovereignty in respect of the area. The words "I present Darjeeling" must be read in conjunction with the word "possession", and this could have had no other meaning than that the Raja merely gave possession of the area to the British Government to construct houses for the use of European subjects and servants of the British Government. This intention of the Raja is clear from his subsequent conduct. In several of his letters addressed to the British Representative at Darjeeling, the Raja vehemently contended that when he gave Darjeeling, he had no intention of transferring the population to the control and authority of the British Government. It is equally clear from the draft proclamation which the Raja sent to the British Government for approval. The relevant clause of the draft reads as follows: "We before ceded to the Hon'ble Company Darjeeling to afford change of air to sick gentlemen; they and their servants will reside there in quiet and solely for change of air (without claiming the exercise of authority)." (Political Consultation. 7th September, 1840. Nos. 98-99). This is also substantiated beyond doubt by Major Lloyd when he speaks of "the trust" in relation to the Darjeeling area. This interpretation is fully confirmed by the view taken by the British Government after the execution of the deed. In his letter of the 7th December, 1840, the Secretary to the Government wrote as follows to the British Superintendent at Darjeeling: "His Lordship in Council would not be disinclined to the renewal, only however when a fitting opportunity may present itself, of negotiations having for their object a complete surrender of every kind of claim of jurisdiction and interference with all persons and property within the ceded tract, receiving in lieu a fixed annual payment and relying on the justice of the British Government for its punishing all criminals proved deserving of it." In his memorandum of September 1846, the Under Secretary to the Government wrote as follows: "Whatever the circumstances under which it was obtained, the deed of



cession granted by the Rajah gives to the British Government a title to Darjeeling but it is important to observe that this deed which is untranslated, and its purport only generally known, is the sole title and as *we have no other title to the place than this deed, so we can have no other rights in the place but what are expressly stated in the deed.* The Government, it is equally certain, has no rights in Darjeeling except what was expressed in the deed of cession. Lord W. Bentick saw the importance of having a properly expressed grant, a grant which should in fact transfer Darjeeling to British authority and British Laws. Is the paper in the Foreign Office such a grant, or does it merely cede as a gift (*a gift of a certain tract for a certain purpose does not in itself imply the transfer of sovereign rights, such rights can only be given by express stipulation*) a certain roughly defined tract in the Sikkim territory? This ought to be ascertained because the Raja has more than once declared to Dr. Campbell that when he ceded the land ‘to build houses on’, he did not at the same time give away his jurisdiction.”

Powers of the British Government in relation to Darjeeling are derived from paramountcy and must cease with paramountcy.

16. It is obvious from the fore-going discussion that the deed executed by the Raja of Sikkim did not intend to convey and does not convey, any right or power of sovereignty to the British Government. In accordance with the view held by all international publicists as well as by the judges of the Permanent Court of International Justice, wherever a State claims that another State has ceded to it any power of sovereignty, it must show that there is an express stipulation to this effect in the treaty of such cession. In the present case there is nothing in the deed which could by any reason be construed as surrender of any sovereign power over the Darjeeling area, and the text of the deed cannot be enlarged by reading into it stipulations which are contrary to the natural and obvious meaning of the words. (See Advisory opinion of the Permanent Court of International Justice in the case of *Access to the Port of Danzig*. A/B 43. p. 144). It follows, therefore, that the powers of sovereignty exercised by the British Government in and over the Darjeeling area are not derived from the deed of grant; they can only be attributed to the exercise paramountcy; it can legitimately be asserted that the British Government acquired these rights by virtue of being the paramount power in India; and there is no other source to which such rights and powers could be ascribed. In accordance with His Majesty’s Government’s Plan, these rights and powers must, therefore, revert to the Ruler of Sikkim on the lapse of paramountcy. The Independence of India Act, 1947 has placed this matter beyond question.

The grant becomes null and void with transfer of power in British India.

17. The Government of Sikkim also contend that the grant made by the Raja of Sikkim to the British Government was *personal* to the British Government and must, therefore, cease to have any validity in the eye of the law on the termination of British authority in India. It is a well-known rule of international law that personal rights and obligations of a State cannot devolve on a successor State unless there is an express stipulation in the treaty dealing with such succession. Hall, for instance, says: “With the rights which have been acquired and obligations which have been contracted by the old state as personal rights and obligations the new state has nothing to do ..... The new state, on the other hand, is an entirely fresh being. It neither is, nor does it represent, the person with whom other states have contracted. They may have no reason for giving it the advantages which have been accorded to the

person with whom the contract was made, and it would be unjust to saddle it with liabilities which it would not have accepted on its own account.”\* Kiatibian, an accepted authority on the subject, holds the same view. According to him, “international agreements, political or non-political, having been concluded in view of the person of the contracting parties must come to an end with the disappearance of one of them”.\*\* Bustamante Y Sirven, a judge of the Permanent Court of International Justice, is of the same opinion: “As regards survival of international treaties, when one portion of a State is constituted into an international juristic person, opinion is almost unanimous that the country which proclaims itself independent is not governed by anterior treaties nor can it invoke them in its favour. It is clear that this matter must be subject to a possible accord with the other nations which have concluded such treaties. Their future validity must, however, depend not on the authority which has signed them nor from the moment when they have been approved but on fresh accord of wills between the independent State and the other interested party or parties.”† Accioly is more emphatic and clear: “There is no doubt that on principle the new States cannot be governed by agreements concluded by the organism to which they belonged nor can they invoke them in their favour, because in fact *a new State is a new juristic person with whom the treaties were not concluded or engagements contracted.*”‡ This view has also received the sanction of international practice. Thus, in the case of the *Manila Railway Company* where a British Corporation had obtained from the Spanish Government a concession for the construction of a Railway in the Island of Luzon in the Philippines, the Government of the United States of America held that the obligation in question was a personal obligation of Spain and that, as it was not assumed by the United States in the treaty of peace and cession, it would not pass with the sovereignty of the Islands to the United States. The Attorney General of the United States thus expressed his view: “The concessions here in questions are executory contracts, not concerning the public domain owned by Spain, but containing many personal obligations of Spain and other parties. Spain is regarded by the law of nations as having a personality of her own distinct from that of the power which has succeeded her in control of the ceded territory, and I am not aware of any authority for saying that such personal obligations, either on the part of the Government of Spain or the other contracting parties, become binding as contractual obligations upon a government which made no such promises, or upon the individual toward a government to which he made no such promises.”§ The Government of Sikkim contend that on the basis of this rule of international law the Successor Government in India cannot claim to be subrogated to the rights and obligations of the British Government arising under the deed executed by the Ruler of Sikkim. The deed must, therefore, become null and void on the lapse of paramountcy, and the rights of the Ruler of Sikkim must *ipso facto* revert to him on the transfer of power in India. On the same ground, the obligations of the British Government to make annual payments for the Darjeeling territory must also come to an end.

---

\* *International Law*. Section 27.

\*\* *Les conséquences juridiques de la transformation des états sur les traités*. p. 22.

† *Droit International Public*. French Edition. Vol. III. pp. 279-280.

‡ *Op. cit.* Vol. I. pp. 178-179.

§ Moore, *Digest of International Law*. Vol. 1. pp. 395-400.

The grant must become extinct with the purpose for which it was made.

18. Further, it should also be pointed out that the grant of Darjeeling was expressly stipulated to be for a specific purpose. The deed itself clearly states that the grant was “or the purpose of enabling the servants of his Government, suffering from sickness, to avail themselves of its advantages.” The letter which the Governor General originally addressed to the Raja of Sikkim makes it quite clear that Darjeeling tract was being acquired for the use of the *European servants and subjects of the British Government*. This is also manifest from the following extract from the letter which the Raja of Sikkim wrote to the Governor General on 12th February, 1840: “You informed me that the malaria of the plains was prejudicial to Europeans and desired me as an act of friendship to allow houses to be built for them at Darjeeling, at the same time stating that it was not the intention of the Government to derive a cownie of revenue from the land. This was always the strain in which that subject was treated.” It is evident that with the termination of British authority in India the object for which the grant was made will also cease to exist, and as such the grant itself must come to an end and the property will re-vest in the Ruler of Sikkim. This is in accord with the principle of the international law that the failure of the object of an inter-statal agreement inevitably leads to the extinction of such agreement. Thus, Frangulis includes ‘*disparition de l’objet*’ as one of the causes of the termination of international agreements.\* Bustamante Y Sirven is of the same opinion.† This view is fully in accord with the practice of the British Government. According to McNair, “there is evidence that the United Kingdom Government regards *the cessation of, or a vital change in, the specific raison d’être of a treaty as a ground for recognising the ipso facto termination of a treaty*. This occurs most plainly in the case of a physical change such as the permanent drying-up of a river, the permanent submersion of an island, the complete exhaustion of a sedentary fishery, etc. But *the same principle is applied to a change which, though not purely physical, destroys the very object of a treaty stipulation: cessante razione cessat lex.*”‡

Officers and Courts will act without lawful authority after date of transfer.

19. Two conclusions irresistibly follow from the fore-going discussion. First, on the lapse of paramountcy, all rights and powers of sovereignty now exercised by the British Government in and over the Darjeeling area will automatically revert to the Ruler of Sikkim. Secondly, the deed of grant will, on the termination of British authority in India, cease to be operative and the rights of property in respect of the Darjeeling area will re-vest in the Ruler of Sikkim. It is, therefore, imperatively necessary that before the transfer of power takes place, possession of the territories in question should be retroceded to the Government of Sikkim or a fresh agreement concluded between the Successor Government in India and the Government of Sikkim. If this is not done, enormous legal and administrative difficulties will arise, as all officers and courts functioning in the territories would, after the date of transfer, be acting without any lawful authority. “The rights and powers of sovereignty of a nation over its territory cease on the transfer of that sovereignty to another government by a cession of the territory. The power to preserve peace and order may remain in the officers previously appointed by the ceding state until the actual presence of the

\* *Théorie et pratique des traités internationaux*. pp. 122-188

† *Op. cit.* Vol. III. p. 482

‡ *The Law of Treaties*. pp. 378-379.

agents of the succeeding government, but this does not imply that sovereign power remains in the former nation.”\* Thus it was held that when Spain’s sovereignty was withdrawn from Porto Rico the Spanish Governor General and all other officers of the Crown of Spain, whose authority consisted in the exercise of royal prerogatives delegated to them, ceased to exercise such authority. A similar view was taken when the Islands of Hawaii were annexed to the United States. It was held that after the annexation, the officials of Hawaii were without power to convey a title, legal or equitable, to public lands. In the present case, the legal position is that on the lapse of paramountcy all sovereign powers in respect of the Darjeeling area will *de jure* revert to the Ruler of Sikkim, and similar results will follow. It is also clear that after the date of transfer, the Successor Government in India would not be competent to legalise the acts of officers continuing to function in the territories in question. Nor could the Government of Sikkim confer any authority on such officers as they would not be seised of the territories unless actual delivery of possession was effected. This view is fully borne out by the American case of *Davis v. Police Jury of Concordia* (9 Howard at p. 289) where the court observed as follows: “It is true that in a treaty for the cession of territory its national character continues for all commercial purposes; but full sovereignty for the exercise of it does not pass to the nation to which it is transferred until actual delivery. But it is also true that the exercise of sovereignty by the ceding country ceases, except for strictly municipal purposes, especially for granting lands. And for the same reason in both cases; because after the treaty is made there is not in either the union of possession and the right to the territory which must concur to give *plenum dominium et utile*. To give that there must be the *jus in rem* and the *jus in re*, or what is called in the common law of England the *juris et seisinæ conjunctio*.”

20. The Government of Sikkim would like to add that if the Successor Government in India desire to come to an arrangement with the State of Sikkim in respect of these territories, they would be fully prepared to consider any reasonable proposals in this behalf but justice and equity demand that the legal rights of the Ruler of Sikkim should be fully recognised.

Memorandum Prepared

by

Sirdar D. K. Sen, M.A., B.C.L., (Oxon),

Barrister-at-Law.

---

\* Moore, op. cit. Vol. I. p. 306 citing *United States v. Reynes & Howard*, 127).