

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gholab Khoonwurree Bebee v. Eshar Chunday Chowdry and others, from the Sudder Dewanny Adawlut, Calcutta; delivered 12th July, 1861.*

---

Present :

LORD KINGSDOWN.  
LORD JUSTICE KNIGHT BRUCE.  
SIR EDWARD RYAN.  
LORD JUSTICE TURNER.

WE have looked carefully through the papers in this case, and remain of the opinion, which we intimated at the hearing, that the Decree cannot be supported. Considering the large amount of the sum at stake and the position in life of the Respondents, it is difficult to account for their omitting to appear at our Bar to maintain the Decree which they have obtained. But as far as we can discover the proceedings of the Appellant have been regular, and she is entitled therefore to call upon us to dispose of the appeal *ex parte*.

The Appellant carries on business as a Banker ; in that character she alleges that she made very large payments for the Respondents, during the time that they, or some of them, were minors, in respect of Jumma or revenue due to the Government from a Zemindary belonging to them. These advances are alleged to have been made at the instance of a person who was the guardian of the infants, and executor and trustee under the Will of their father. For these sums the Respondent on taking possession of their Zemindary had given a kist-bundee or engagement to pay the amount by instalments, and for one of the instalments so secured the action in this case was brought.

There appears to be great reason to suspect fraud on the part of the guardian, and some reason to believe that the agents of the Appellant were privy to it. There can be little doubt that the lease of the Respondents' Zemindary which was made by the guardian to a servant of the Appellant, and which was disputed by the Respondents and surrendered by the lessee, was really made to the servant as the nominee and for the benefit of the Appellant. It is very possible that if the Respondents had instituted a suit to take the accounts of this guardian, and, charging collusion between him and the Appellant, had investigated the transactions which had taken place, it might have appeared that there was no such sum as was claimed by the Appellant justly due to her.

The Judges of the Sudder, who have pronounced a decree in favour of the Respondents, seem to have been influenced by reasons of this nature, and to have rested their judgment on the ground that no adjustment of accounts had taken place to ascertain the balance really due to the Appellant before the kistbundee was granted.

But we think that this objection under the circumstances cannot be allowed to prevail; for the question whether it would be fit to insist on this adjustment was distinctly brought under the notice of the Respondents before the kistbundee was executed, and decided by them in the negative. It is proved by Hurroo Gobind Sen that when a claim was made upon the Respondents in respect of the bonds given by the executor and guardian, they were desirous of avoiding the payment and consulted him as to the mode of doing so; that they were advised by him that they could only do so by instituting a suit to which the executor must be a party, and in which a settlement of his accounts would be required. Now the executor was their spiritual guide, and had been the spiritual guide of their father, and it was not considered proper to institute a suit against him. Under these circumstances it was thought better to come to terms with the Appellant, to obtain time for payment of the debt by instalments. The kistbundee was accordingly executed, and the witness says that he considered the arrangement beneficial to the Respondents.

There seems no reason whatever to doubt this

statement. Hurroo Gobind Sen, who makes it, was in the employment of the Respondents, was connected with them by marriage, and was referred to in their answer as one of their agents who ought to have been employed in any business of this description.

It appears impossible to permit the Respondents, after the death of the guardian, now to dispute their liability for payment of the debt which they had thus deliberately undertaken to pay.

The kistbundee itself and its registration appear to be regularly proved, payments have been made of some of the instalments, and such payments are indorsed upon the instrument. The account books of the Appellant were produced at the hearing, and the fact of the payments made by her as the consideration for the bonds given by the executor seems to have been thereby established.

Whatever suspicion may attach to the dealings between the Appellant and the executor it cannot affect the decision of the present suit. We think that the Decree of the Zillah Court must be restored, and the Decree of the Sudder reversed, and that the Appellant must have the costs of the proceedings in the Sudder Court, but we are not inclined to give any costs of this appeal.

We will make a report to Her Majesty in conformity with the opinion which we have expressed.

---