Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mahomed Zahoor Ali Khan v. Thakooranee Rutta Kooer, from the late Sudder Dewanny Adawlut at Agra; delivered 10th February, 1868.

Present:

Sir James W. Colvile.
Sir Edward Vaughan Williams.
Sir Richard Torin Kindersley.
Lord Justice Rolt.

Sir Lawrence Peel.

THIS is an Appeal from a Decree of the late Sudder Dewanny Adawlut, of the North-Western Provinces of Agra, bearing date the 11th July, 1864, which affirmed a Decree of the Principal Sudder Ameen of Meerut, bearing date the 25th February, 1863.

The Plaint was filed in the Court of the Principal Sudder Ameen of Allygurh on 3rd of May, 1861, and is entitled the Petition of Plaint of the Plaintiff against Rutta Kooer and nine other persons there named, and against the Zemindaree rights in certain Mouzahs there named, the property of the said Rutta Kooer; and it claims to recover 21,280 rupees, amount due on a bond dated 19th August, 1856, and states that Rutta Kooer borrowed from the Plaintiff 10,000 rupees, and executed a bond engaging to pay the amount on demand with interest at 2 per cent. per mensem and that the Plaintiff had repeatedly demanded the amount due, but she evaded payment, and had not discharged the debt. It further stated that in order

that the money might be lost to the Plaintiff the other Defendants had combined, and got the above estates *belonging* to Rutta illegally transferred to them, though they had not been put in possession ; and therefore, as a precautionary measure, the Plaintiff filed that Petition of Plaint, *with the bond on which his suit was based*, against Rutta Kooer, the principal Defendant, and the other Defendants who claimed her property, and it concludes by praying that the amount sued for might be decreed against the Defendants, *and the property aforesaid*, with interest to the date of realization.

The bond of the 19th August, 1856, thus filed with the plaint, and on which, as stated in the plaint, the suit is based, is a simple money bond purporting to have been executed by Rutta Kooer for 10,000 rupees and interest. None of the other Defendants are in any way parties to it, nor does it purport to be a mortgage or charge upon or in any way to refer to the property mentioned in the plaint.

The Plaintiff has also tendered in evidence another bond, dated the 28th November, 1857, by which Rutta Kooer purports to secure a further advance, and to pledge her Zemindary estates to the Plaintiff until she should pay off the whole debt to him : but his suit is in no way based upon this second bond.

Now as to all the Defendants, except Rutta Kooer, it is obvious on the face of the Plaint that no relevant case is made against them. The allegation that they have combined with the Plaintiff's alleged debtor to get her estates illegally transferred to them is no ground of suit against them, if, as is the case here, the Plaintiff sues upon an instrument which creates no charge upon or estate or interest of any kind in the lands. If he can obtain judgment on his bond, and it is not satisfied, he may possibly be entitled hereafter to raise sueh a case, as that suggested in the plaint, against the land and against these Defendants ; but any such proceedings before execution on the judgment are premature. It follows, therefore, that, as against these Defendants, at all events, the Appeal must be dismissed, and it is wholly unnecessary to consider as to them the other defences set up in their several written statements.

Nor as to Rutta Kooer was it open to the

Plaintiff, on this plaint, to ask for any Decree other than a personal Decree for payment of the amount due on the bond. The Plaintiff is not entitled to rely on his second bond. Though this Committee is always disposed to give a liberal construction to pleadings in the Indian Courts so as to allow every question fairly arising on the case made by the pleadings to be raised and discussed in the suit, yet this liberality of construction must have some limit. A Plaintiff cannot be entitled to relief upon facts or documents not stated or referred to by him in his pleadings, and the only thing that can be rightly insisted on by the Plaintiff here is a Decree for payment against Rutta. To a Decree so limited, he would be entitled in a suit properly framed, if he proved his case; and the only defences that could usefully be raised by Rutta are—that she was incompetent to contract debt—or that she did not in fact contract debt— or that she had satisfied it.

Two of these defences she has in fact pleaded viz., 1st (in substance and effect), that no such money was ever lent her and that the bond was fabricated; and, secondly, that her property was under the Court of Wards, and that the Government Officials had not been made cognizant of or accorded their sanction to the institution of the suit, and that, even supposing the bond to be genuine, the claim of the Plaintiff could not lie against the person and property of the Defendant.

Amongst the issues fixed for trial by the Principal Sudder Ameen (besides those relating to the validity of the bond and the existence of the debt), was one in the following terms:—

"3rd. Had the Defendant the power to contract debts, her estates being under charge of the Court of Wards; and is the fact of no notice having been given of the execution of the bond and the contracting of the debts at the Collectorate a sufficient argument for the falsity of the bond or not?"

The form of the issue apparently assumes that Rutta's estates were under charge of the Court of Wards, and that the only question was the effect of this circumstance on her power of contracting debts; but it will be observed that the question is, "Had the Defendant the power to contract debts?" and not the more limited question

whether she had power by contract to charge her land with debts.

It is further to be observed that though the third issue appears to assume that the Defendant's estates were under the charge of the Court of Wards, yet the fact of their being or of their having been under charge was the only fact or point treated as open to dispute or question in the Courts below. It was assumed by both the Courts that if her estates were in charge the case was at an end—the Plaintiff could have no relief of any kind; and both Courts being of opinion that there was sufficient proof of the estates having been in the custody of the Court of Wards, from a time anterior to the date of the bond to a time subsequent to the institution of the suit, the Plaintiff's suit was dismissed with costs, and there was no examination of or observations upon the evidence which the Plaintiff had tendered of the loan of the money to Rutta, and the execution by her of the bond.

Under these circumstances the principal questions to be considered on this Appeal, are whether the estate and property of Rutta were in fact under the charge of the Court of Wards when the bond is alleged to have been executed, and if so, whether such custody or charge was of a character which made her what is called, under the Regulation to be presently referred to, a disqualified female, and incapacitated her to contract debt in any way.

These questions turn mainly on Regulation LII of 1803. That Regulation, after reciting that it is essential to the interest and happiness of minors, and of such females as shall not be deemed competent to the management of their own estates, and of idiots, lunatics, and other proprietors of land paying revenue to Government, who are or may be rendered incapable of managing their lands by natural defects or infirmities of whatever nature, that the lands of persons coming within the above descriptions should be managed for the benefit of the proprietors by persons appointed to the trust by Government, and that a Court of Wards should be instituted with powers to superintend the conduct and inspect the accounts of the managers of the estates of such persons, it was enacted (sec. 5) that the superintendence of the Court of Wards should extend to the persons and estates of (amongst other persons)

all proprietors of entire estates paying revenue immediately to Government who were or might be females not deemed by the Governor-General in Council competent to the management of their own estates. (Sec. 6.) That the lands of disqualified landholders should not be liable to be sold for arrears of public revenue on account of the periods during which such lands might be under the charge of the Court of Wards. (Sec. 8.) That the Collectors of the revenue should ascertain and report to the Board of Revenue what proprietors were disqualified. (Sec. 9.) If a proprietor of lands were disqualified solely from being a female, the Court was to take charge of the estate and to report to the Governor-General, with power to the Governor-General to declare her exempt from the Regulation. (Sec. 10.) Managers and guardians were to be distinct, and managers to have care of estates, real and personal; and by Sec. 22 and 23 provision was made for the application of monies received of managers, in which there was a provision that any just debts then outstanding against, or thereafter adjudged against the estates of disqualified landholders, must necessarily be satisfied; but that the circumstances of all such debts were to be reported to the Collector, and by him to the Court of Wards previous to payment by the Manager; and by Sec. 26, females, though disqualified, were not to be subjected to guardians, but might themselves receive and disburse their own maintenance.

There is no pretence for saying that, but for the application of this Regulation to her, Rutta Kooer was incapable of contracting the debt in question. The Regulation itself does not in terms declare the incapacity, or define the circumstances in which it is to arise. The provisions of such a law should be strictly pursued, in order to effect the disqualification of any particular person; and no one should lose her natural liberty of contracting unless the relation of Ward and Guardian between her and the Court of Wards be regularly and completely constituted.

The examination, however, of the evidence in the Court below appears to have been addressed solely to the object of discerning whether the Talook was, in fact, under charge, and it seems to have been assumed that if in charge Rutta Kooer was a dis-

qualified person. But their Lordships are of opinion that this does not necessarily follow; the Court of Wards may have obtained the custody originally under circumstances not affecting her personally, and may have continued in charge after the estate devolved upon her under circumstances which do not necessarily make her a disqualified female under Regulation LII of 1803. It becomes, therefore, material to ascertain, not merely, whether the estate was under charge, but also what were the circumstances under which it was first brought under charge, and afterwards so continued.

The material facts are these. The landed property of Rutta Kooer in question (usually called throughout these proceedings the Talooka Chukkatul in the Collectorate of Allygurh) had previously belonged to her sister Maha Kooer. She was declared a disqualified female under Regulation LII of 1803, as far back as the year 1811, and the Talook was then placed under the Court of Wards, and a manager was appointed under the Regulations; but in 1838, in lieu of continuing it in the hands of a manager, the Talook was let to farmers, who paid their rents to the Collector, who exercises the powers of the Court of Wards, and throughout the whole period from 1811 to Maha Kooer's death (with the exception of a few years arising from circumstances not material to the question) the Malikana or Maintenance was paid by the Collector to Maha Kooer.

Maha Kooer died in 1853. On her death adverse claims were set up to the property: one by Aram Singh, claiming as heir of her deceased husband; another by one Ali Buksh, claiming under a deed from her; and the third by Rutta, claiming as her sister and heir. The claim of Ali Buksh appears to have been first disposed of, and was found to be groundless. As between Aram Singh and Rutta Kooer the Government, through the Sudder Board of Revenue, appears to have decided in favour of Rutta, whose name was recorded as proprietor of the talook in place of the deceased Maha; but she was not put into possession. About this time, and apparently in consequence of the decision of the Sudder Board, and certainly in or before 1855, a civil suit was instituted by Aram Singh in the Court of the Principal Sudder Ameen of Allygurh, to enforce his claim against Rutta, and to this suit he made the

Government a party, on the ground of the estate being under the control of the Court of Wards. Thereupon the official correspondence which is set forth in the proceeding No. 19 of the Collector, at pp. 16 and 17 of the Record, took place. This mentions that in August 1855 a petition was filed by Rutta in the Court of the Allygurh Collector, stating "that she was not subject to the Court of Wards; that Government had been wrongly made Defendant; also that she had succeeded by inheritance to the property of her deceased sister, Mussumat Maha Kooer, who was subject to the Court of Wards; that the functions of the said Court had ceased with the ward's demise; and that the Board, in paragraph 16 of their Orders No. 83, dated 6th February, 1855, had ruled that, in the absence of any other rightful claimant, the Molgoozaree management must depend upon her discretion; and from this correspondence it appears that the final determination of the Government was to put in an answer to the effect that Government was not interested in the suit, that the question of right should be settled between the contending parties themselves, and that Government should be exempted from all costs. This was done, the litigation went on between Aram Singh and Rutta Kooer; a decree was made in favour of the latter by the Principal Sudder Ameen, the date whereof does not appear in the proceedings; there was an appeal from that to the Sudder Court, where, as appears at p. 36 of the Record, the suit finally ended in a compromise some time in or before the year 1862. If the evidence stopped there it would be impossible to hold that the continued possession of the Court of Wards was more than that of a stakeholder; since if it really held the Talook as a Court of Wards on behalf of Rutta Kooer, treating her as a disqualified proprietor, it was clearly the duty of the Collector representing the Court of Wards actively to defend her title to the estate. It appears, however, that the Revenue Authorities have not acted consistently on their then view of the case; for in February 1856, Rutta being recorded as proprietor, a mutation of names as to several villages in the talook was applied for on behalf of certain persons, including the present Appellant, who claimed under assignments from her; and this application having been disallowed by the Collector, because a civil suit

was pending, and it was difficult to say who was in possession, the Sudder Board confirming, on appeal, the Collector's decision, declared that Chukkatul never had been emancipated from the control of the Court of Wards, and had never been given into the possession of Rutta.

In 1856 the farmers set up claims to a settlement adverse to the proprietary title of Rutta in Chukkatul. Their claim was disallowed, and thereupon a correspondence between the Government authorities took place, in the course of which the Secretary to Government, in a letter dated 21st August, 1856, stated that the Lieutenant-Governor agreed in opinion with the Sudder Board that no claim adverse to the proprietary title of the Thakooranee (Rutta Kooer) existed, nor had any sprung up during the administration of the Court of Wards, and that he authorised the acceptance of proprietary engagements from the Thakooranee, with certain terms of settlement in favour of the Theekadars or farmers. And it appears from the Judgment of the Sudder Dewanny Adawlut (App., p. 481, though the document itself is not set forth in the Record) that a Proclamation, dated 1st October, 1856, issued from the Collector's Office, in conformity to the orders of Government and the Board, giving full proprietary possession to Rutta Kooer, who had filed the usual Durkhurst or Petition, asking to engage for the payment of revenue, and that the Putwary of the Talook acknowledged receipt of the Proclamation and the possession of Rutta on the 13th October, 1856. This arrangement, however, was not finally carried out. It appears from the letter of the Collector of the 18th of September, 1858 (App., p. 31), that before the contemplated settlement was completed the Mutiny broke out. He says, " Then happened the Mutiny, with the farmers still in possession of the villages, and the Government orders for giving possession to Rutta Kooer not carried out." From the same document it appears that in October 1857, when order was restored to the district, he, as Collector, resumed charge of the Talook, of which, on the 2nd of March, 1858 (App., p. 19), he appointed a manager. And at pp. 24 and 25 of the Record is further proof that, between the last-mentioned date and April 1862, the Talook was under the

management of the Court of Wards. But in or before the month of August 1862, the Court of Wards for some unexplained reason gave up the possession and management of the property, as appears from the Perwannah of the Collector filed in this suit, which is referred to by the Principal Sudder Ameen in his proceeding fixing the issues, at p. 44 of the Record.

Their Lordships are of opinion that the Courts below were warranted in concluding from this evidence that, with the exception perhaps of the period during which all order and government may have been suspended in this district by the Mutiny, the Court of Wards was continuously in the actual possession of this Talook from 1811 to August 1862. They do not, however, think that by reason of that possession, which began in the time of the Maha Kooer, Rutta Kooer was, when this bond is alleged to have been executed, incapable of binding herself by contract. They have already observed that in order to effect such a disqualification the Regulations must be strictly pursued. Under this Regulation the Collector is to report a female proprietor as disqualified to the Board of Revenue, and the Board of Revenue in their capacity of a Court of Wards is to report that they have taken the estate under their charge, to the Governor-General in Council, so as to enable him to exercise his discretion of exempting her from the operation of the Regulation. Nor are these mere forms; they are necessary preliminaries to the disqualification of a female so as to invalidate an alienation even of the property under charge of the Court of Wards by her. This was expressly decided in the case of Jan Khátun (5 S. D. A. R., 240). That case arose in Lower Bengal and under Regulation X of 1793. But Regulation LII of 1803 is little, if anything, more than an extension of the earlier Regulation to the North-Western Provinces. The provisions of the two upon the point in question are absolutely identical. Again, the present case is far stronger than that of Jan Khátun. The contract here impeached does not, like that which was then in question, affect the land. It is a simple *money* obligation. And the evidence in this case not only fails to show that the necessary reports of the Collector and of the Board of Revenue were made;

it also, though not uniformly consistent, goes far to negative any intention on the part of the Revenue Authorities to treat Rutta Kooer as a disqualified proprietor, or a person incompetent to manage her affairs. It shows that when her title was attacked in 1855, they declined to act as a Court of Wards in its defence, but left her to sue or be sued as a person *sui juris* on her own responsibility, and at her own cost. It further shows that in 1856, and in the very month in which she is alleged to have executed the bond, they had taken all the necessary steps towards putting her into the full possession and enjoyment of the Talook, as a proprietor competent to its management, on her entering into proper engagements for payment of the Government Revenue; and that the completion of that arrangement was only prevented by the accident of the Mutiny. The fact, if fact it be, that for some time in and after 1858 the property was regularly managed by the Court of Wards can have no bearing on the question of her capacity to bind herself by contract in 1856.

The decisions of the Principal Sudder Ameen of Meerut, and of the Sudder Court of Agra, were nevertheless rested exclusively on the ground that Rutta Kooer had no capacity to contract debt, because the talook was in the custody of the Court of Wards. The Sudder Court expressed itself thus:—

"Holding the opinion that the superintendence of the Court of Wards did not cease until 1862, and hence, that Musst. Rutta Kooer was not competent to incur any debt, or make any alienation of her property, or that she is in any way answerable for the claims, there is no necessity for our inquiring into the second issue."

The question whether any formal report was ever made of Rutta being a disqualified female was left wholly unnoticed.

The attention of the Sudder Court was called to the unsatisfactory nature of the decision in this respect on an application by the present Appellant for a review of the judgment, when he stated as one of the grounds of his application that "no formal order was passed placing Musst. Rutta Kooer under the charge of the Court of Wards. Hence, though the property to which she succeeded may have been under the charge of the Court, yet Rutta Kooer in

person was a free agent and should be held responsible for her Acts." And the Sudder Court in refusing leave to review, gave the following among other reasons for so doing :—

" Even allowing for the sake of argument, that no formal order was given during 1855, 1856, and 1857, placing the person of Musst. Rutta Kooer under the charge of the Court of Wards, yet, as it is admitted by counsel for the Plaintiff that the property to which she succeeded was under the Court of Wards during 1855, and a part of 1856, we cannot allow that such omission, if omission there be, in any way affects the case, for to all intents and purposes Musst. Rutta Kooer was under the charge of the Court of Wards. We are unable to dissociate the person of Musst. Rutta Kooer from the property to which she succeeded. We think that she in person and her property were under the charge of the Court of Wards, and that she was not free to contract debts and to hypothecate her property for the liquidation of such debts. Regulation LII of 1803 certainly does provide for the liquidation of the just debts of disqualified landholders, ' just debts now outstanding against or hereafter *adjudged against the estates* of disqualified landholders ; ' but it does not permit a ward to contract debts without the sanction of the Court of Wards. It would be strange indeed if the law allowed the ward to contract debts, to alienate and hypothecate property under charge of the Court of Wards, when it distinctly declares that the manager in charge shall not dispose of any portion of the property confided to his care without the consent of the Court of Wards."

For the reasons already given, their Lordships cannot agree with this conclusion. They are of opinion that the finding of the Courts below, on the only issue which they have really tried, is wrong.

They have, however, felt some doubt as to the Order which it will be their duty to recommend Her Majesty to make on this Appeal. They have already intimated that the Appeal must be dismissed against all the Respondents except Rutta Kooer. And they have felt some doubt whether, inasmuch as the suit was wholly misconceived, the proper course was not to dismiss this Appeal altogether, without prejudice to the right of the Appellant to bring a new

suit against Rutta Kooer upon this bond, treating it as a mere money bond. Considering, however, that such a suit would probably be met by a plea of the Act of Limitations; that in the circumstances of this case such a defence would be inequitable; and that, the Respondent not having appeared, their Lordships are not in a condition to put her on terms as to her defence to a fresh suit; they have come to the conclusion that the fairer course is to do what the Judge of the First Instance might, under the Code of Procedure, have done at an earlier stage of the course; namely, allow the Appellant to amend his Plaint so as to make it a Plaint against Rutta Kooer alone for the recovery of money due on a bond. Her liability on the bond may thus be tried on the issues already settled. Upon those issues, and the evidence taken on them, their Lordships will intimate no opinion. The nature of the transactions, and the *status* of the obligor, make it peculiarly desirable that the Appellate Court should have the benefit of the judgment of the Courts below on those issues.

The Order, therefore, which their Lordships will humbly recommend to Her Majesty is, that the Appeal be dismissed against all the Respondents except Rutta Kooer; that the Decrees of the Courts below be reversed, except so far as they dismiss the suit against those Respondents with costs; that it be declared that Rutta Kooer was not, at the date of the alleged bond, incapable of binding herself by contract by reason of the Talook Chukkatul being still in the custody or under the charge of the Court of Wards; that the cause be remanded to the High Court of Judicature for the North-Western Provinces, with directions to allow the Appellant to amend his Plaint so as to make it a Plaint against Rutta Kooer alone for the recovery of the money alleged to be due to him on the bond; and to take all necessary steps for the trial of the said suit upon the issues already settled, or to be hereafter settled; with liberty to the Respondent, Rutta Kooer, to make any defence to the suit which is not inconsistent with the declaration aforesaid. Their Lordships will give no costs on this Appeal.