

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Gunga  
Pershad Sahu v. Maharani Bibi, from the High  
Court of Judicature at Fort William in Bengal ;  
delivered December 11th, 1884.*

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Present :

LORD FITZGERALD.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE question in this case turns upon the amount recoverable on a mortgage bond which bears date the 25th March 1869. The bond was given by Parbutty Koer, who is the grandmother and guardian of the Respondent Maharani Bibi. The effect of the bond is that security is given on a certain mouzah belonging to the Maharani Bibi for the sum of Rs. 8,000, to be repayable in about a year's time with interest at the rate of 18 per cent. per annum. The Plaintiff has received payment of an amount equal to the principal due upon the bond with simple interest at 12 per cent. per annum, and he had received that amount of payment before he commenced the suit in which this Appeal is presented. If therefore 12 per cent. is all that he is entitled to, the suit must altogether fail. If 18 per cent. is what he is entitled to, then there is still a sum due, and he ought to get a decree for that sum.

The Judge of Tirhoot, who heard the case originally, was of opinion that, according to the contract, the Plaintiff was entitled to 18 per cent. until the actual time of payment, but, in exercise of the power vested in the Court, he cut down the

rate of interest to 3 per cent. from the date of the suit to the date of the decree, and after decree he gave no interest at all. He therefore evidently thought that the transaction was an exorbitant one, and that, where the Court had discretion, it should lower the rate of interest. Up to the date of suit he had no discretion, and he construed the bond as has been stated.

The Defendant in the suit appealed to the High Court, and that Court was of opinion that the Plaintiff was entitled to interest only at the rate of 12 per cent., and inasmuch as, calculating at that rate, he had been wholly paid off, the suit was necessarily dismissed.

The sole question now is as to the additional 6 per cent. claimed by the Plaintiff.

It has been stated that the bond was executed by the grandmother as guardian of the Defendant, who was a minor at the time. The 18th section of Act XL. of 1858 says that "no such person shall have power to sell or mortgage any immoveable property without an Order of the Civil Court previously obtained." The guardian obtained an Order of the Court on the 5th of February 1869, on a petition in which she stated the necessity of taking a loan of Rs. 8,000 for the purpose of paying some pressing debts, which were then carrying interest at 12 per cent. The Order runs in these terms: "That the petitioner be permitted to take a loan of Rs. 8,000 by mortgage of mouzah Sahu, pergunnah Ahalwara." That Order says nothing whatever about interest on the Rs. 8,000. It would certainly seem desirable that a Court which has thrown upon it the responsibility of authorising loans to be raised upon the security of infants' estates should, where possible, specify the rate of interest or the maximum rate of interest at which the loan should be raised, especially in India, where the rate of interest bears

so very large a proportion to the principal advanced. There may sometimes be difficulties in doing so. There may have been a difficulty in this case for aught we know. At all events the Judge did not do it. Supposing the Judge does not do it, that cannot give to the guardian the power of raising the authorised loan at any rate of interest that the guardian thinks fit. It has been said the guardian might think fit to raise a loan at the rate of 100 per cent. If that were brought to the notice of the Judge, he would probably institute a very rigorous inquiry before authorising such a loan. On an Order of this kind, which authorises the raising of a principal sum but says nothing about the interest, their Lordships think that the proper construction, or at all events the most favourable construction to the lender, is that it authorises a loan at a reasonable rate of interest.

With respect to the Judgement of the High Court their Lordships agree with Mr. Justice Romesh Chunder Mitter in his construction of the bond. It was made a question how far the bond, on the face of it, provided for the payment of interest—whether up to the date fixed for the payment of the principal, or up to the date of actual repayment? They agree with Mr. Justice Mitter in thinking that it provided for payment of interest up to the date of actual repayment.

Mr. Justice Mitter then goes on to say “the plaintiff must show that the transaction was beneficial to the interests of the minor,” and then he examines the whole transaction, and finds that the raising of Rs. 8,000 at a reasonable rate of interest was beneficial to the interests of the minor, but that the raising at the rate of 18 per cent. was not beneficial. Their Lordships think that when an Order of the Court has been made authorising the guardian of an infant to

raise a loan on the security of the infant's estate, the lender of the money is entitled to trust to that Order, and that he is not bound to inquire as to the expediency or necessity of the loan for the benefit of the infant's estate. If any fraud or underhand dealing is brought home to him that would be a different matter; but apart from any charge of that kind their Lordships think he is entitled to rest upon the Order. Therefore, as regards the principal of this loan, it is sufficient for the Plaintiff to say:—"I have got the Order of the Court." But when he comes to the rate of interest he has not got the Order of the Court; and if he chooses to lend his money without an Order that binds the infant's estate, then it is for him to show that the matter was one of necessity, or of clear expediency for the benefit of the infant's estate. In this case their Lordships fail to find any evidence showing any such necessity or expediency. They agree with the view taken by Mr. Justice Mitter that there is no case made on behalf of the lender to show that such a loan was for the benefit of the infant's estate. The result is that the Court has recourse to the ordinary rate of interest ruling in that part of the country upon loans on good security, and finding that rate to be 12 per cent. it says that 12 per cent. is the reasonable rate to charge in the present instance.

Another objection has been raised, which has nothing to do with the merits of the case, namely, that this point was not raised upon the pleadings. It certainly does not appear to have been raised on the written statement. It was put at the bar that the point was waived, but there is no trace of waiver; on the contrary, the Defendant seems to have been desirous to raise every point that occurred to her advisers to defeat the claim of the Plaintiff. It does not appear that there was any formal preliminary settlement of issues, but

in the Judgement it is stated what the points for consideration are ; and Mr. Leith very fairly said that he would take those points as the issues in the suit. The second of those issues is:— “ Whether Parbati Koer really executed the bond in suit.” That puts into issue the execution of the bond : but then it goes on—“ And whether “ the Defendant is bound to pay off the debt.” That puts in issue the validity of the bond, not only on account of non-execution by Parbati, but its validity generally as against the Defendant, and therefore suggests the question whether the Defendant was bound by the acts of Parbati Koer ? When we come to the Appeal the sixth ground of Appeal is somewhat more specific than that. The sixth ground is this:—“ That your “ Petitioner is in no way bound by the acts or “ statements of Parbati Koer unless it is proved “ that those acts were done under necessity and “ for the benefit of the estate.” No doubt that does not distinguish between the principal of the bond, which was covered by the Order, and the interest, which was not covered by the Order, but it shows that the Defendant was disputing all disputable acts of Parbati. On that ground of appeal Mr. Justice Mitter addresses himself to the question of necessity, and decides in favour of the Defendant. Now it would be a lamentable thing if an Appeal in which their Lordships are clearly of opinion that the High Court were right on the merits of the case were to be determined the other way on the ground that there was some imperfection in the pleadings. It would be lamentable in any case, and especially in India, where we know the pleadings are prepared with a considerable amount of looseness. If it could be suggested on the part of the Appellant that practical injustice had been done him by the want of particularity in the pleadings, and by their not

having drawn a proper distinction between the principal due on the bond and the interest, however much their Lordships might lament it, they might be compelled to allow the Appeal. But no such suggestion can be made. Their Lordships entirely disbelieve that more complete justice could be done in this case than has been done already.

There is another consideration. If this were really a point sprung upon the Appellant by the Judgement of Mr. Justice Mitter for the first time, it would have been good ground to apply to the Court for a review. But no such application was made; and their Lordships would be very loth to disturb the Decree of the High Court upon a technical point of this kind, where the whole matter might have been set right if the High Court had been applied to. Even if the Appellant were to succeed on this point, what could this Committee do? It could only advise Her Majesty to send back the case to be tried upon the question whether it was necessary or reasonable to raise this loan at the rate of 18 per cent. The High Court could have done that on review, and if they thought their Decree really did injustice no doubt they would have done so. Their Lordships do not feel justified in disturbing the Judgement of the High Court under such circumstances.

The result is that this Appeal must be dismissed with costs, and their Lordships will humbly advise Her Majesty to that effect.