Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Gopal and another v. *Shamskhaton and others, from the Court of the Judicial Commissioner, Central Provinces, India; delivered* 23*rd July* 1892.

Present:

LORD HOBHOUSE.
LORD MORRIS.
LORD HANNEN.
SIR RICHARD COUCH.
LORD SHAND.

[*Delivered by Sir Richard Couch.*]

This is an appeal from the decision of the Judicial Commissioner of the Central Provinces in a suit brought by the Appellants against the first Respondent, and Daud Rao the father of the other Respondents, in the Court of the Deputy Commissioner, Hoshangabad. The plaint stated that the Defendant Shamskhaton, the mother of Daud Rao and widow of Sarje Rao, on the 4th July 1871 executed a mortgage for Rs. 4,000 of mouzah Bilawada in favour of the Plaintiffs and their deceased father. The 4th paragraph was as follows:—" On 29th March 1875 the " Defendant No. 2 (Daud Rao), having filed a " regular suit, obtained a decree for 14 annas " share in the said village. He is in possession " (of the said village) and lives jointly. But he " is bound to repay the sum for which the deed " has been executed. Defendant No. 2 has " ratified the deed. Hence he is made a party

" to the suit." The plaint then stated that the money due from the Defendants was Rs. 4,000 on account of principal and Rs. 5,390 on account of interest, and prayed that the Defendants should be ordered to pay Rs. 9,390, with interest from the institution of the suit, and in default of payment that the mortgage should be foreclosed and the Plaintiff be put in possession of the village. The defence of Daud Rao was that at the time of the execution of the mortgage he was absent from home in the service of the Raja of Nagpur, and knew nothing of the transaction; that when he returned from Nagpur and heard that a deed had been obtained by the Plaintiffs from his mother by fraud he at once sued his mother, and had his share of 14 annas in the village separated; that there was no consent on his part to the deed. The defence of Shamskhaton was that the deed was obtained by fraud.

The issues framed were—" 1. Was the deed " for Rs. 4,000 fraudulently executed ? 2. Did " Defendant No. 2 ratify the deed of mortgage " executed by Defendant No. 1 ? 3. Is Defendant No. 2 liable for the debt incurred by " Defendant No. 1 ?" Evidence was given on both sides. The Deputy Commissioner, in his judgment delivered on the 4th December 1886, found the first issue for the Plaintiffs. On the second issue, after stating the evidence applicable to it, he said, " From the above evidence " I hold that Defendant No. 2 was fully aware " of the execution of the deed of mortgage by his " mother, Mt. Shamskhaton, and admitted his " liability for the debt, and thus ratified the " deed of mortgage. I therefore find the second " issue in favour of Plaintiffs." The ground of his holding that the Defendant No. 2 had admitted his liability for the debt on the mortgage is the construction which he put upon a passage in

a judgment of the Deputy Commissioner, dated the 7th July 1875, in a suit between the Plaintiffs and Defendants upon a bond executed by both Defendants, in which the Deputy Commissioner says that in a bond for Rs. 42, which had been produced in Court, reference is made to two other documents, which reference is equivalent to an admission of liability. The bond thus referred to, which was executed by Daud Rao in favour of Jiwan Ram, and is dated the 9th August 1872, contains the following passage:—"Besides "this there are two separate deeds of previous "dates; one is the mortgage deed of village, "and the other is a bond. The money due "under them is also duly repayable." Here it is to be observed, that whether this is an admission by Daud Rao of liability under the mortgage depends upon the construction of these words, especially the word "repayable." They may and would ordinarily mean, repayable by the party liable to pay.

There was no finding on the third issue, and a decree was made against both Defendants directing them to pay Rs. 9,390 with costs of suit within six months from its date, failing which they were to be absolutely debarred from redeeming the mortgage. From this decree the Defendants appealed to the Commissioner of the Nerbudda Division. His judgment was delivered on the 25th April 1887. He affirmed the finding of the Deputy Commissioner on the first issue. As to the second, he said that the evidence upon which the First Court held the ratification to be proved was,—

1. The admission of Defendant No. 2 that he became aware in August 1872 of the existence of the mortgage deed.
2. A letter marked I, written by him, asking the Plaintiffs not to sue on the deed.
3. A copy of the judgment of the Deputy Commissioner, dated the 7th July 1885.

4. A copy of the bond marked L for 42 rupees.
5. The fact of the Defendent No. 2 at first allowing his mother to retain the whole of the family property, and then receiving seven-eighths of it from her.

He rejected the letter marked I. as not proved to be genuine, and said the judgment of the Deputy Commissioner proved two things, "(1.) That in "July 1875, Defendant 2 was made liable on a "bond executed by Defendant 1 alone. (2) That "the original of Bond L. was then produced," and that the statement in it showed that the mortgage deed was "known to and accepted "by Defendant No. 2." A finding that the bond showed that the mortgage deed was accepted by the Defendant, as a binding obligation upon him, would be an inference of law, an inference which, in their Lordships' opinion, is not a just one from the facts which the Commissioner held to be proved. The knowledge of the mortgage, and saying that the money due upon it was repayable, do not amount to an agreement by him to be bound by it. As the mortgage did not purport to be made in any way on behalf of Daud Rao, it was not a case for ratification. A new agreement or obligation was necessary to bind him. The judgment of the Commissioner then proceeds to say, "Lastly there is the conduct of Defendant "2 in allowing Defendant 1, notwithstanding "that she was entitled to only one-eighth "of the property, to take possession of the "whole of the property, with the exception "of Rs. 1,400; all the rest of the 4,000 entered "in the mortgage debt was on account of the "former proprietor's debt, and the Government "revenue of the mortgaged village. The mort-"gage deed, therefore, constituted a charge on "the village, which Defendant 2, as the owner, "was liable to pay." Here the fact found is the conduct of Daud Rao. That there was a charge on the village which he as owner was liable to

pay is an inference of law, and it is one which the fact found is not sufficient to justify. Mr. Doyne, in support of this part of the judgment, referred to the previous mortgage by Sarje Rao, which is marked E in the Record. But at the head of it are the words "Rejected—Not proved," with the initials of the Deputy Commissioner, and therefore he could not be allowed to use it. The Commissioner confirmed the decree of the first Court, with costs of the appeal.

Daud Rao then appealed to the Judicial Commissioner of the Central Provinces, and the first question for consideration is whether the Judicial Commissioner had power to entertain the appeal. Section 584 of the last Civil Procedure Code (Act XIV. of 1882), which is applicable to the Court of the Judicial Commissioner, says that "unless when otherwise provided, " . . . . from all decrees passed in appeal " by any Court subordinate to a High Court, an " appeal shall lie to the High Court on any of the " following grounds (namely)—(*a*), the decision " being contrary to some specified law or usage " having the force of law; (*b*) the decision having " failed to determine some material issue of law " or usage having the force of law; (*c*) a sub- " stantial error or defect in the procedure as " prescribed by this Code or any other law, " which may possibly have produced error or " defect in the decision of the case upon the " merits." Section 585 says that "no second " appeal shall lie except on the grounds men- " tioned in Section 584." The effect of these sections has been stated in several judgments of this Committee. It will be sufficient to refer to the last of them, *Ramratan Sukal* v. *Mussumat Nandu* (L. R., 19 I. A., 1), where it is said "It " has now been conclusively settled that the " third Court, which was in this case the Court " of the Judicial Commissioner, cannot entertain " an appeal upon any question as to the sound-

" ness of findings of fact by the second Court; " if there is evidence to be considered, the de- " cision of the second Court, however unsatis- " factory it might be if examined, must stand " final." The present case does not come within that rule. The facts found need not be questioned. It is the soundness of the conclusions from them that is in question, and this is a matter of law.

Their Lordships think it is proper that they should notice a construction which has been put upon Section 584, in a case in the High Court at Allahabad, *Nivath Singh* v. *Bhikki Singh* (I. L. R. 7, All. 649), where it is said by the learned Chief Justice that by " specified law " in clause (*a*) is meant " the statute law," and by " usage having the force of law," is meant " the " common customary law of the country or " community." Their Lordships cannot approve of this construction. " Usage having the force of " law " means a local or family usage as distinguished from the general law, of which there are many instances, and " law " is not to be limited in its meaning to statute law. This is shown by clause (*b*), where the words must be intended to mean the same as in (*a*). In the corresponding provision in the first Civil Procedure Code (Act VIII. of 1859) as to special appeals (which they are there called), the words are " contrary to some law or usage having the " force of law." The meaning of law and usage there is clear, and there is no reason for thinking that the words were intended to have a different meaning in the Act of 1882 or in the Civil Procedure Code of 1877, where the word " specified " is first introduced. In the judgment of this Board in *Mussammat Durga Choudhrain* v. *Jawahir Singh Choudhri* (L. R., 17 I. A., 122), it is said that " specified " in sub-section (*a*) means " specified in the memorandum or grounds of " appeal " ; and their Lordships adhere to this opinion.

The Judicial Commissioner reversed the decree of the Commissioner as regards Daud Rao and his share, and made a decree against him for seven-eighths of Rs. 500 only, (a debt of his father Sarje Rao of which he has agreed to pay his share), with costs proportionately in all Courts. The Judicial Commissioner went fully into the facts of the case, and said that in his opinion the evidence was not sufficient to justify the conclusion of the Lower Appellate Court, and that it could not be held on that evidence that the Defendant Daud Rao was bound by the mortgage executed by his mother. The judgment is substantially upon the question of law. Their Lordships, taking the facts to be as found by the first Appellate Court, approve of it, and being of opinion that it was competent for the Judicial Commissioner to hear the appeal, they will humbly advise Her Majesty to affirm his decree and to dismiss this appeal.