

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Toolsey
Persaud Bhuckt v. Benayek Misser, from the
High Court of Judicature at Fort William in
Bengal; delivered Wednesday, 26th February
1896.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

THE suit out of which this appeal arises was one for foreclosure of two mortgages made by the first Defendant in the action, Toolsey Persaud Bhuckt, in favour of the present Respondent. The first mortgage was dated the 11th of May 1885, and the second mortgage or further charge was dated the 28th of November 1885.

The principal defence, and the one upon which the learned counsel for the Appellant has principally addressed their Lordships, was that the Appellant was a minor on the 11th of May 1885, at the date when the first mortgage was executed. It is obvious that that is a question of fact, to be determined by the evidence, documentary and oral, given in the case.

The case stands in this way. There was evidence given that the Defendant was of age at the date in question. Evidence was given, chiefly based upon a horoscope, and supplemented by the oral evidence of three or four witnesses, that the Defendant was a minor at that date, the date on which his birth was put being the 2nd of June 1867.

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The suit came, in the first instance, before Mr. Justice Wilson, sitting on the original side of the High Court at Calcutta. Certain issues were stated and tried by the learned judge, which are to be found in the judgment at page 179 of the record. The 9th issue was: "Was the first Defendant at the date of the first mortgage a minor?" The learned judge says, "The first question then is, was he an infant at the time of the execution of the mortgage. He was admittedly of age at the date of the further charge." The learned judge then states, and comments upon, the evidence in favour of the first Defendant having been of age at the date of that mortgage, and then he comments on the evidence against it. He says: "What have we against that?" and then he states the evidence which was given, and he says: "That, I must say, is very unsatisfactory evidence to counterbalance the deliberate assertions of the first Defendant himself, of the executors of his father's will, and the long series of acts on his part wholly inconsistent with the story that he was a minor at the time of the transaction. * It is sought to confirm this evidence in two ways, and the first document that is used by way of confirmation is a horoscope which seems to me to be an extremely suspicious one." He concludes his observations in this matter thus:—"I have little doubt that it is a made-up document, and made up with singular indiscretion." Then he refers to evidence which has been given in confirmation of the inference sought to be drawn from the horoscope, and he concludes by saying: "I think therefore that the evidence is strong to show that at the time this mortgage was executed the first Defendant was not an infant."

That judgment, as it appears to their Lordships, was a judgment given by the learned judge who tried the action and heard and weighed the

evidence, on the effect of that evidence on his mind, and there does not appear to their Lordships to be any question of law whatever arising on the learned judge's judgment.

An attempt has been made to say that there was misconstruction of documents, but, in their Lordships' opinion, that attempt has wholly failed. It is not a question of misconstruction of documents. It was simply treated by the judge as a question of the weight to be attached to the evidence adduced before him.

When the case came before the High Court on appeal, the learned Chief Justice, Sir William Petheram, very carefully and very fully discussed all the evidence which was given in favour of the present Appellant's case. He says, in the course of his judgment, commenting on that evidence: "I think that both these statements are false, and " that they were made with the object of mis- " leading the Court on this very question of the " Defendant's age," and he concludes his opinion on this part of the case by saying: "In my opinion " the Defendant has entirely failed to prove that " he was a minor when he executed the mortgage " for Rs. 20,000 on May 11th, 1885, and that this " issue must be found for the Plaintiff."

Their Lordships think that no question of law, either as to construction of documents or any other point, arises on the judgment of the High Court, and that there are concurrent findings of the two Courts below on the oral and documentary evidence submitted to them. That being so the present appeal cannot be entertained.

There were several other issues, but really no argument has been addressed to their Lordships upon them. There does not seem to be any ground whatever for impeaching the finding of the learned judge, confirmed by the High Court, on the other issues that were raised, as to consideration for the mortgages, as to the

Defendant being so intoxicated at the time of the mortgages that he was unable to understand their nature, or that they were obtained by undue influence.

Under these circumstances their Lordships will humbly advise Her Majesty that the appeal be dismissed, and the Appellant must pay the costs of the appeal.