

(1878) 06 PRI CK 0002

Privy Council

Case No: None

Ramjisdas and Imtiaz
Ali

APPELLANT

Vs

Rajah Bhagwan Bax
and another

RESPONDENT

Date of Decision: June 22, 1878

Citation: (1878) 5 IndApp 197

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier, JJ.

Judgement

Robert P. Collier

1. This is an appeal from a judgment of the Commissioner of the Lucknow Division of the Province of Oudh, by which he varied an order made by the Superintendent of Incumbered Estates under the Oudh Talookdars Relief Act of 1870.
2. To make the judgment and the grounds of appeal from it intelligible a short history of the case is necessary.
3. On the 3rd of June, 1870, Rajah Omrao Sing, talookdar of Pakra Ausari, executed a deed whereby he acknowledged that he had received Rs. 60,000 from the Appellants, for which sum he pledged his estate to them. They were to hold the estate and receive the rents and profits of it for twelve years, after which time he was to be entitled to repay them the principal and interest at 12 per cent. per annum and to recover possession of the estate.
4. Soon after another advance of Rs. 12,000 was made to the Rajah, and Rs. 3000 were advanced to his brother for which he became security. Some other small sums were advanced to him at 18 per cent.
5. His estate was soon after taken possession of by the Court of Wards on a representation, which turned out to be unfounded, of his incapacity; subsequently on his application the provisions of the Oudh Talookdars Relief Act (XXIV. of 1870)

were duly applied to the estate.

6. The order directing the application of the Act to the estate, and appointing a manager, was dated the 30th of October, 1871. Mr. Glynn, the Deputy Commissioner of the province, who had been the manager under the Court of Wards, was appointed manager under the Act. In November, 1872, he was succeeded by Mr. Finn.

7. The Oudh Talookdars Relief Act appears to have been enacted mainly in the interest of the talookdars, for the purpose of protecting them in some degree against the claims of money-lenders by which their estates were being consumed, and undoubtedly some of its provisions are somewhat stringent against creditors. With its policy, however, we have no concern. The Act, after restraining proceedings in execution against the talookdar and his estate,--invalidating all incumbrances created by him during the management, investing the manager with large powers for protecting and improving the property, and other purposes, and providing for the proof of debts, proceeds to enact as follows:

9. The manager shall in accordance with the rules to be made under this Act determine the amount of the debts and liabilities due to the several creditors of the talookdar, and persons holding mortgages, charges or liens on the said property, or any part thereof.

10. An appeal against any refusal, admission or determination under Sections 7, 8, or 9, shall lie, if preferred within six weeks from the date of such determination, to the Commissioner of Division to whom the manager is subordinate, and the decision of such Commissioner or of the manager if no such appeal has been so preferred, shall be final.

11. When the total amount of such debts and liabilities has been finally determined, the manager shall prepare and submit to the Chief Commissioner a schedule of such debts and liabilities, and a scheme for the settlement thereof, and such scheme when approved by the Chief Commissioner shall be carried into effect. Until such approval is given, the Chief Commissioner may, as often as he thinks fit, send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme.

8. Section 20 enables the Chief Commissioner to make rules consistent with the Act in all matters connected with its enforcement, and declares " that such rules when approved by the Governor-General of India in Council, and published in the local official Gazette, shall have the force of law."

9. Rules were duly made in pursuance of the Act, of which the 8th is in these terms:

When the amount of any debt, both principal and interest, has been determined, the manager may direct that interest, at a rate not exceeding 6 per cent. per annum, shall be paid on the aggregate sum declared to be due from the date of the decision

till the date of payment.

10. The combined effect, therefore, of the Act and of the Rule made under it is that the manager is to determine the amount due for the principal and interest up to the date of his determination, calculating such interest according to the contract rate (if any), and may allow subsequent interest on the amount so determined, as upon a judgment debt, up to the time of payment, provided the rate of such subsequent interest does not exceed 6 per cent.

11. Mr. Glynn on the 4th of September, 1871, while he was manager under the Court of Wards, made the following memorandum:

The claim (of Appellants) for Rs. 60,000 + Rs. 12,000 will now be registered. There were Rs. 3000 let off, and I will not bring them in now against the Rajah after a compromise. About the remaining Rs. 3107. 8a. inquiry will be made on copies of the claimants' books being received. The Rajah will be referred to also about this money and it will be admitted if no valid reason be shewn against my doing so by the Rajah.

12. After Mr. Glynn was appointed as manager under the Act, the following memoranda were made by him:

Will not let off more than the Rs. 3000. Imtiaz Ali will let off 10 per cent. for cash payment on interest.

27th April, 1872.

The interest on the Rs. 72,000 will be according to the bond up to September, 1871, and after that at 6 per cent. per annum. The claim for Rs. 3107 8a. in respect to Babu Quidal Sing is not admitted. The Babu has his own village, and the Babu should be proceeded against.

10th June, 1872.

13. It has been contended on the part of the Respondent that this last memorandum was a "determination" by Mr. Glynn, under the 10th section of the Act, and that not having been appealed against within six weeks it became final. Their Lordships, however, do not regard it as such a determination. On the appointment of Mr. Finn as manager in November, 1872, the Appellants brought their claim before him, contending, and rightly as it appears to their Lordships, that there had been no final determination by his predecessor, whereupon Mr. Finn made an order, which he was induced to alter on review. His order on review, dated the 25th of November, 1872, increased the principal sum, and thus concluded:

Interest on the debt to date of decision will be calculated at the rate agreed upon. Future interest upon the sum covered by the bond at 1 per cent. (per mensem), and remainder of the debt at 6 per cent, per annum.

14. Soon after this order the Rajah died and was succeeded by his infant son, who is a Respondent together with the manager (or superintendent) of the incumbered estates.

15. After a good deal of delay this order was brought to the attention of the Chief Commissioner, who, acting probably under the powers conferred on him by the 11th section of the Act, appears to have disapproved of so much of it as directed future interest at 12 per cent. per annum, regarding this rate of interest as prohibited by the 8th rule, in which view their Lordships concur. Thereupon (and on the 8th of June, 1874), the following proceeding was recorded by Pundit Kali Sahae, described as Superintendent of Incumbered Estates, Lucknow Circle:

A docket No. 1322, dated the 29th of April, 1874, has been received from the personal assistant to the Chief Commissioner under cover of the Commissioner's docket No. 1704, dated the 4th of May, 1874, directing that the superintendent was not authorized to award interest at a higher rate than 6 per cent. Wherefore a higher rate of interest than 6 per cent. will not be allowed.

Ordered that a letter be addressed to the decree holders, communicating to them the above information. This proceeding will be filed with the record.

16. On this the Appellants became unable to avail themselves of Mr. Finn's order and a deadlock appears to have ensued. The next material proceeding was taken by the present Appellants, who appealed to the Commissioner of the Lucknow Division against the foregoing order of Kali Sahae. The Division Commissioner referred them to the Chief Commissioner, who declined to interfere in their behalf, whereupon they preferred another appeal to the Division Commissioner, dated the 10th of September, 1874, wherein they contended that Mr. Finn's order was right and that it was final. The petition concludes in these terms:

Under these circumstances your Petitioner most respectfully re-submits his petition of appeal with inclosures, and prays that it may be formally admitted and judicially disposed of to enable any of the parties feeling aggrieved by the decision to prefer his appeal under Section 4, Act VI. of 1874, to Her Majesty's Privy Council.

17. The present Appellants therefore, in September, 1874, desired a judicial determination on substantially the same questions as are raised in the present appeal.

18. It does not appear what, if anything, was done upon the appeal of September, 1874, and it may be inferred that the proceedings dropped, or were superseded by those next to be mentioned.

19. On the 23rd of October, 1874, an appeal raising the same question in another form was presented by the present Respondents against the order of Mr. Finn, on the ground (among others) that it was illegal on the face of it in giving a rate of interest prohibited by law. On this appeal the Commissioner ordered that, Mr.

Finn's calculation of principal being adopted, the interest should be calculated under the terms of the deed up to Mr. Glynn's order of the 10th of June, 1872, and thereafter at 6 per cent. per annum.

20. This is the judgment now appealed against, and the point mainly relied upon is, that the appeal being out of time, the Commissioner had no jurisdiction to entertain it. The Commissioner was aware of the difficulty in the way of his hearing the appeal raised by the limitation of appeals prescribed by the 10th section of the Oudh Talookdars Relief Act, and appeared to think that Section 333 of Act VIII. of 1859 might apply to the case, in which view their Lordships cannot concur. He proceeded to dwell on the exceptional nature of the case, on the fact of the Respondent being a minor and incapable of exercising his right to appeal, except through the manager, who himself made the order, and could scarcely be expected to appeal against it--a state of things which the Act does not seem to contemplate--he referred to the action of the Chief Commissioner, who objected to the allowance of interest beyond the lawful rate, practically setting aside Mr. Finn's order, and he might have referred to the appeal of the now Appellants against the order of the 8th of June, 1874, whereby they desired an adjudication on practically the same question as that raised in the appeal before him, expressly with the object of getting rid of the deadlock occasioned by the conflicting decisions in Oudh by an appeal to Her Majesty in Council. He finally came to the conclusion that he had power to amend so much of the order as was manifestly at variance with the law. Their Lordships, although the case is not free from difficulty, are not so clearly satisfied that under the exceptional legislation with which they have to deal, and the exceptional circumstances of this case, the Commissioner had not this power to deal with the order of his subordinate officer, as to feel themselves driven to a decision the effect of which would be to reverse an order which appears to them, except in one particular, just and proper, and to set up another which, if acted upon, would practically repeal the 8th rule made under the Oudh Talookdars Relief Act. The particular referred to is that the order directs the 6 per cent. interest to commence from the 10th of June, 1872, the date of Mr. Glynn's memorandum; whereas in their opinion that date should be the 25th of November following, when the gross amount then due for principal and interest was finally determined by Mr. Finn. They will therefore humbly advise Her Majesty that the order appealed against be varied so far as to direct that the amount determined by Mr. Finn on the 25th of November, 1872, to be due should be adopted, and that subsequent interest should be allowed thereon at the rate of 6 per cent. per annum. There will be no costs of this appeal.