

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Mussamat Amanat Bibi v. Luchman Pershad
and another from the Court of the Judicial
Commissioner of Oudh; delivered December
15th, 1886.*

Present :

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

THE question in this case is whether there are sufficient grounds made out by the Plaintiff for reforming or altering the deed of mortgage which was executed on the 15th October 1878. The Plaintiff in his plaint declares:—"That on the 15th October 1878, at Fyzabad, the present Plaintiff, having been deceived by the Defendants, executed, according to the accounts furnished by the Defendants, and without examining them, an instrument for Rs. 437,376 12 ans. in lieu of the aforesaid decrees, and of the debt due to Ram Kishen Mahajan." Then he says that, looking to the actual accounts between the parties, "Rs. 58,688 ought to be deducted from the mortgage money entered in the aforesaid instrument," and so on, and then that the cause of action accrued on the 25th June 1879, when he found out the mistake.

The Judge in giving judgement at the trial says:—"The Plaintiff admits that previous to the execution of the mortgage deed an account was produced before him, and that Uma Parshad, his diwan, stated that a certain sum was due. Mir Ghazafar Husain, a well-known talukdar and a man of ability, had also been

“ requested by the Plaintiff to examine the
“ account, and the Plaintiff has deposed that he
“ relied on him. A draft of the deed was pre-
“ pared only after the accounts had been pro-
“ duced; and the Plaintiff says, moreover, that
“ ‘it was discussed for some 15 days, and
“ ‘altered.’” In another part of his judgement
he says:—“The Defendants have not produced
“ clear proof that Plaintiff entered into a special
“ agreement about interest, nor that he autho-
“ rised them to include other debts in the
“ mortgage deed, or to appropriate payments
“ on account of decrees to the liquidation of
“ other claims; but it is only reasonable to
“ assume that when the Defendants were entering
“ into such a heavy transaction with the Plaintiff,
“ they would make a general settlement of their
“ claims, and not leave small, or comparatively
“ small, debts outstanding.”— It appears to their
Lordships that, putting a correct construction
upon the deed, and taking the evidence which
was adduced, and the findings of the learned
Judge, there is no reason to suppose that there
was any fraud or deceit on the part of the
Defendants, or that there was any mutual mis-
take of the parties as to the amount which was
stated as the sum for which the security was to
be given.

Under these circumstances their Lordships are
of opinion that the decision of the Judge who
tried the case in the first instance, and the decree
of the Judicial Commissioner who affirmed that
decision, are correct, and they will, therefore,
humbly advise Her Majesty that the judgement
below be affirmed, and that the appeal be dis-
missed the Appellant paying the costs of the
appeal.