

*Privy Council Appeals Nos. 9, 10 and 11 of 1911.
Bengal Appeals Nos. 8 of 1907, 17 of 1908 and 6 of 1909.*

**Maha Prasad Singh, since deceased (now re-
presented by Sashi Bhusan Singh), and
others - - - - -** *Appellants,*
v.
Ramani Mohan Singh, since deceased - - - *Respondent.*

Surendra Mohan Singh and others - - - *Appellants,*
v.
**Maha Prasad Singh, since deceased, and
others - - - - -** *Respondents.*

**Ramani Mohan Singh, since deceased (now
represented by Surendra Mohan Singh),
and others - - - - -** *Appellants,*
v.
**Maha Prasad Singh, since deceased, and
others - - - - -** *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH MAY 1914.

Present at the Hearing.

LORD SHAW.
LORD MOULTON.

SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD MOULTON.]

In this case their Lordships have to deal
with three consolidated appeals from decrees
of the High Court of Judicature at Fort William
in Bengal, arising out of a mortgage suit filed in

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the court of the Subordinate Judge at Bhagalpur in Bengal. The first and principal appeal is from the decree of the Subordinate Judge enforcing the mortgage, which was affirmed on appeal by the High Court. Subsequently to making that decree the Subordinate Judge made two orders varying the same, both of which were on appeal set aside by the High Court. From these two orders of the High Court appeals have been brought by the Respondents to the main appeal, and they constitute the second and third of the consolidated appeals.

The mortgage bond, to enforce which the action was originally brought, was a bond for Rs. 3,50,000, dated the 21st December 1896, in favour of Babu Suraj Narayan Singh, the father of the principal Respondent, and secured on lands situated in the Sonthal Parganas and elsewhere. The mortgagors were members of a joint Hindoo family. Inasmuch as no question arises in this appeal as to the parties to the present action being the proper parties, it will be convenient to call the Appellants in the principal appeal the mortgagors and the Respondents the mortgagees.

The bond sued on was the last of a series of bonds for increasing amounts. The total of the principal amounts advanced was, according to the statements in the plaint, Rs. 2,85,903 1 9. But the total claim of the mortgagees at the date of suit was Rs. 5,36,038 11 10, the balance being made up of interest which was charged according to the provisions of the different bonds, the rate under the bond in suit being $7\frac{1}{2}$ per cent. per annum with annual rests. By far the greater portion of the mortgaged properties was situated in the district of the Sonthal Parganas, and the mortgagors resided in that district. The remainder of the mortgaged property was situated

within the local jurisdiction of the Bhagalpur Court.

The bond in suit was executed at Bhagalpur and contained a stipulation that the mortgagees might enforce it in the Bhagalpur Court.

The suit was commenced on June 20th, 1904. The plaint shows that it was an ordinary suit to enforce a mortgage. Written statements of defence were put in by various defendants and various issues were raised and decided by the Subordinate Judge at the trial. Most of these relate to matters no longer in dispute. The only issues that remain for their Lordships' decision in this appeal turn on the fact that the mortgagors reside and the chief part of the property is situate in the Sonthal Parganas, so that it is not necessary further to refer to the other issues.

The judgment of the Subordinate Judge, which is dated February 12th, 1906, was in favour of the mortgagees on all issues. On the appeal to the High Court the argument seems to have been confined to the sixth issue, which was in the following terms:—

“Are the Plaintiffs precluded from claiming compound interest, or interest exceeding the amount of the principal advanced under Regulation III. of 1872.”

The High Court found in favour of the mortgagees on this issue, and from that decision the present appeal is brought. But in the hearing before the Subordinate Judge an issue was raised as to the jurisdiction of the Court of Bhagalpur to entertain the suit, and this point has again been raised in the argument before their Lordships. Seeing that it is a question of jurisdiction, and depends on no disputed facts, their Lordships are of opinion that they cannot decline to entertain it, although it is not specifically raised on the appeal, more

especially as it necessarily presented itself in the argument.

The position of the Sonthal Parganas is very peculiar. They are under separate and special legislation, which differs widely from the legislation applicable to the rest of Bengal. The Lieutenant-Governor of Bengal has the power to vary that legislation from time to time by notifications published in the Calcutta Gazette, under and according to provisions appearing in the regulations relating to the district as will presently be more particularly referred to. At the hearing of the appeal it was found that the documents in the record did not adequately inform their Lordships of the relevant notifications which had thus appeared in the Calcutta Gazette, and, accordingly, it was arranged that the parties should supplement the record by putting in copies of such notifications as they thought material. These were furnished to their Lordships in December last, and they affect to an important degree the matters in issue, and more particularly those that turn upon the settlement of the lands to which the mortgage bond relates.

In order to make clear the legal questions that arise in this appeal, it is necessary to explain the nature and sequence of the legislation relating to the Sonthal Parganas.

The special legislation for the Sonthal Parganas commences by an Act of the Governor-General of India in Council, No. XXXVII. of 1855, which was passed on December 22nd, 1855. Its full title is:—

“An Act to remove from operation of the General Laws and Regulations certain districts inhabited by the Southals and others and to place the same under the superintendence of an officer to be specially appointed for that purpose.”

The preamble of the Act recites that the General Regulations and Acts of Government then in force in the Presidency of Bengal were not adapted to the uncivilised race of people called Sonthals, and it was therefore deemed expedient to remove from the operation of such laws certain districts. It then proceeded to enact by clause 1, as follows:—

“The districts described in the Schedule to this Act are hereby removed from the operation of the General Regulations of the Bengal Code and of the Laws passed by the Governor-General of India in Council except so far as is hereinafter provided and no law which shall hereafter be passed by the Governor-General of India in Council shall be deemed to extend to any part of the said districts unless the same shall be specially named therein.”

This is subject to a proviso which is not material to this case.

The Act then proceeds to carry out its main object by the following enactment:—

“The said district shall be placed under the superintendence and jurisdiction of an officer or officers to be appointed in that behalf by the Lieutenant Governor of Bengal. . . . The administration of civil and criminal justice . . . are hereby vested in the officer or officers so appointed.”

This language is perfectly general in its character, and under it the whole administration of civil justice became vested in the officer or officers so appointed. But there follows a proviso to which frequent reference was made in the argument. It reads as follows:—

“Provided that all civil suits in which the matter in dispute shall exceed the value of Rs. 1,000 shall be tried and determined according to the General Laws and Regulations in the same manner as if this Act had not been passed.”

The interpretation of this provision is a matter of great difficulty. Two rival interpretations naturally suggest themselves. The one

is that the officers exercising the jurisdiction shall do so in accordance with the general laws and regulations, so that the rights of the parties are unaffected by the provision, although they are to be pronounced upon by a different judicial tribunal. The other is that not only the laws that govern rights, but also the procedure to enforce those rights is to remain unchanged. Now it must be observed that this is a proviso and not an exception, and accordingly, taken in connection with the general language of the previous portion of the clause, the former of these two interpretations is the one that commends itself to their Lordships, so that it must be construed as providing that the special officer or officers shall try such suits, but that in trying and determining them they shall observe the General Laws and Regulations obtaining in Bengal, which but for the Act would have applied equally in the Sonthal Parganas. It would seem, however, that the other view has been taken in India (*see* the judgment in *Sorbojit Roy and others v. Gonesh Prosad Misser and others*, 10 Cal. 761). Subsequent legislation has, however, rendered it unnecessary, so far as the decision in this case is concerned, to decide what would be the state of things if this regulation were still in force unmodified by any other statutory enactments.

The territorial definition of the Sonthal Parganas was originally to be found in the schedule to this Act; but, by Act X. of 1857, a new schedule was substituted therefor. The judgment of the High Court finds that two-thirds of the mortgaged properties are situated within the district described in that schedule, and it would seem that this estimate may be assumed to be approximately correct for the purposes of this Appeal.

The next Act in chronological order to which it is necessary to refer is the Code of Civil Procedure of 1859. The Sonthal Parganas are not specially named in that Act, and therefore it did not *primâ facie* apply to them; but, nevertheless, we must have regard to the language of section 385 of that Act, which reads as follows:—

“This Act shall not take effect in any part of the territories not subject to the General Regulations of Bengal, Madras and Bombay, until the same shall be extended thereto by the Governor-General of India in Council or by the Local Government to which such territory is subordinate and notified in the Gazette.”

Although the words “Sonthal Parganas” do not appear in this section the district falls under the description there appearing. Accordingly, we find that by a notification on August 19th, 1867, the Code of Civil Procedure of 1859 as amended by the Code of Civil Procedure, 1861, was applied to the Sonthal Parganas subject to certain provisions, restrictions and exceptions which are not relevant to the matters of this suit.

It is not necessary to decide what was the precise effect of this notification. It can hardly have been intended that it should apply to the Courts held by the officers appointed by the Lieutenant-Governor of Bengal in those suits in which they were not required to try and determine the case according to the general laws and regulations prevailing in Bengal. But with regard to civil suits in which the matter in dispute exceeded the value of Rs. 1,000, it would seem to have settled the doubt as to whether they were cognizable by ordinary Civil Courts duly established with jurisdiction within the Sonthal Parganas, because it will be found that the fact that such jurisdiction exists in such Courts is recognised in subsequent legislation.

In the year 1872 a new Regulation was passed for the Sonthal Parganas. It is entitled the Sonthal Parganas Settlement Regulation, and by clause 2 it is directed to be read with Act XXXVII. of 1855 and Act X. of 1857 before referred to. Clause 3 reads as follows:—

“ Subject to the provisions of this Regulation, the Regulations and Acts mentioned in the schedule annexed to this Regulation, or such portions of them as are unrepealed, shall be deemed to be in force in the Santhal Parganas. No other Regulations or Acts shall be deemed to be in force in the Santhal Parganas, except so far as regards the trial and determination of the civil suits mentioned in Section 2, Act XXXVII. of 1855, in which the matter in dispute exceeds the value of Rs. 1,000, when such suits are tried in the Courts established under Act VI. of 1871.”

It further provides that the Lieutenant-Governor of Bengal may by notification in the Calcutta Gazette add to or take away from the list in the schedule.

To arrive at the true meaning and effect of these provisions it is necessary to bear in mind that at the date of this Regulation the Code of Civil Procedure 1859 as amended by the Code of Civil Procedure, 1861, applied to the Sonthal Parganas by virtue of the notification of August 19th, 1867. But the schedule to the Regulation does not contain the Civil Procedure Codes of 1859 and 1861, nor have they ever been added to the above list by any notification of the Lieutenant-Governor of Bengal as above described. It follows that these Civil Procedure Codes were thereafter applicable in the Sonthal Parganas only so far as concerns the trial and determination of civil suits in which the matter in dispute exceeded the value of Rs. 1,000 when such suits were tried in the Courts established under Act VI. of 1871. So far as such suits were concerned there is nothing in this clause

of the Sonthal Parganas Settlement Regulation to alter the effect of the Notification of August 19th, 1867, which applied to them the Civil Procedure Code of 1859 as amended in 1861.

Act VI. of 1871 is known as the Bengal Civil Courts Act, 1871. It is not in the scheduled list. But it was passed at a date when the Code of Civil Procedure, 1859, as amended by the Code of Civil Procedure, 1861, was in force in the Sonthal Parganas, and it would seem as though the wide provisions of the clauses in those Codes giving jurisdiction to Civil Courts must be taken to have given to the Government power to appoint Judges under it within the Sonthal Parganas, inasmuch as section 4 of the Sonthal Parganas Regulation, 1872, provides as follows :--

"The Lieutenant-Governor of Bengal may, by notification in the Calcutta Gazette, invest any competent officer in the Sonthal Parganas with the powers of any Civil Court established under Act VI. of 1871, and may exclude the whole or any part of the said Parganas from the jurisdiction of any of the Courts established under the said Act now having jurisdiction therein."

But while it is evident that the Government by this section left it to the Lieutenant Governor of Bengal to decide in future whether Courts established under the Bengal Civil Courts Act, 1871, should retain jurisdiction within the Sonthal Parganas, it had already made up its mind that such should not be the case with suits relating to lands pending the completion of the settlement which they proposed forthwith to make of all the lands situated in the Sonthal Parganas. This is made clear by section 5, which reads as follows :—

"Till such time as a settlement of the whole or any part of the Sonthal Parganas shall be made under the rules hereinafter provided, and the said settlement shall be declared by a notification in the Calcutta Gazette to have been completed and concluded, no suit shall lie

in any Court established under the said Act VI. of 1871 in regard to any land, or any interest in or arising out of any land, or for the rent or profits of any land, or regarding any village-headship or other office connected with the land, except as hereinafter provided : but such suits shall be heard and determined by the officers appointed by the Lieutenant-Governor of Bengal under section 2 of the said Act XXXVII. of 1855, or by the Settlement Officers hereinafter mentioned, according as the said Lieutenant-Governor shall from time to time direct."

Then follows a proviso by which the officer empowered to try a suit may transfer it to a Court established under the said Act, and thereby give to the Court jurisdiction to try it. No question, however, under this proviso, arises in the present case.

The critical question in this suit is as to whether clause 5 excludes from the jurisdiction of Courts established under the Bengal Civil Courts Act, 1871, suits relating to land where the value of the matter in dispute is more than Rs. 1,000. Their Lordships are of opinion that to this question only one answer can be given. The language of the section is so wide and so peremptory that it gives to the officers therein mentioned sole and exclusive jurisdiction in all suits in regard to any land, or any interest in or arising out of any land, or for the rent or profits of any land. To make the meaning clearer and to render the language more emphatic, it is expressed both in the positive and in the negative form. On the one hand it provides that "no suit shall lie " in any Court established under the said Act 6 " of 1871 in regard to any land, &c.," and on the other hand it provides that such "suits " shall be heard and determined by the officers, " &c." It is impossible not to give to such language the full effect of creating an exclusive jurisdiction. It follows, therefore, that no action

relating to land in the Sonthal Parganas can be brought otherwise than before such officers so long as section 5 is in force with respect to the district in which that land is situated. There is no difficulty in comprehending the motives for such legislation. The section shows that a settlement of the lands was in contemplation, and evidently the aim of the provision was to prevent any clash of jurisdiction between different Courts in matters relating to land until such time as the Government proclaimed the settlement to be completed—a very intelligible policy when it is considered that on the results of such suits between individuals might depend the entries which must be made in the settlement records.

The object of the regulation being thus to throw the whole of the jurisdiction in suits relating to land into special Courts established in and for the Sonthal Parganas, and provision being made for extending that exclusive jurisdiction to all suits, one has to consider the meaning and effect of section 6, which is the section upon which the rights of the parties in the present suit depend. That section, so far as is material, reads as follows:—

“All Courts having jurisdiction in the Sonthal Parganas shall observe the following rules relating to usury, namely:—

“(a) no compound interest arising from any intermediate adjustment of interest shall be decreed ;

“(b) the total interest decreed on any loan or debt shall never exceed one-fourth of the principal sum, if the period be not more than one year, and shall not in any other case exceed the principal of the original debt or loan.”

The respondents sought to establish that the phrase “all Courts having jurisdiction in the Sonthal Parganas” meant Courts locally situated in the Sonthal Parganas, and dealing with

matters purely local. Their Lordships cannot accept this interpretation. The words are definite and precise, and must be applied in their natural signification. It was urged that, taken literally, they would apply to everything done by a Court having jurisdiction in the Sonthal Parganas, whether the matter related to those districts or not, inasmuch as the language used makes the application of the enactment depend on the Court and not on the matter in dispute. But this is to ignore the fact that the Regulation is only applicable to the Sonthal Parganas, and that, therefore, it would not apply to Courts having jurisdiction wider than these local limits when such Courts were dealing with matters relating solely to other parts of India. The enactment, therefore, applies to Courts having jurisdiction in the Sonthal Parganas, and acting under and by virtue of such jurisdiction.

The importance of the section is very great. It is a protective section clearly dictated by the fundamental consideration to which reference has already been made, and which led to the Sonthal Parganas being put under separate and special legislation, namely, that--

“The General Regulations and Acts of Government now in force in the Presidency of Bengal are not adapted to the uncivilised race of people called Sonthals, and it is, therefore, expedient to remove from the operations of such laws”

the districts known as the Sonthal Parganas.

The provision, therefore, is not one of procedure but of substance, and so far as the Courts having jurisdiction within the Sonthal Parganas are concerned it places all contractual stipulations as to compound interest in a position of non-enforceability, and limits statutely the total interest which can be decreed on any loan or debt. The application of these provisions to

the facts of the present case will be considered later.

The next Act in chronological sequence to which reference was made in the argument is Act XIV. of 1874, known as the Scheduled Districts Act, 1874. This is an Act for the purpose of removing doubts as to what Acts or regulations are in force in parts of British India, which have never been brought within or have from time to time been removed from the operation of the general Acts and regulations and the jurisdiction of the ordinary Courts of Judicature. These parts of British India are termed in the Act "Scheduled Districts." They are all set out in the First Schedule to the Act, and amongst them are to be found the Sonthal Parganas. The scheme of the Act is peculiar. It is expressly made to apply to all parts of British India other than the Scheduled Districts. But it is provided that it shall come into force in any scheduled district upon the issue of a notification under section 3 of the Act with regard to such district. In such case the local government may with the previous sanction of the Governor-General in Council by notification in the Gazette of India, and also in the local Gazette declare (among other things) what enactments are actually in force in any of the scheduled districts, and every such notification shall be binding on all courts of law. During the argument counsel for the parties were not in agreement as to whether any notification under this Act had been issued applying to the Sonthal Parganas; but, from the subsequent information supplied to their Lordships, it would appear that no such notification has been issued, and therefore that the provisions of the Scheduled Districts Act, 1874, have never been

applied to them. It is, therefore, unnecessary to discuss further the provisions of this enactment.

The next Act which requires to be noticed is the Civil Procedure Code, 1877. It repeals Act VIII. of 1859 and Act XXIII. of 1861, which constituted the then existing Code of Civil Procedure. Section 1 reads as follows:—

“This Act may be cited as ‘The Code of Civil Procedure’ and it shall come into force on the first day of October 1877.

“This section and section 3 extend to the whole of British India. The other sections extend to the whole of British India except the scheduled districts as defined in Act No. XIV. of 1874.”

The relevant part of section 3 reads as follows:—

“The enactments specified in the First Schedule hereto annexed are hereby repealed to the extent mentioned in the third column of the same schedule.

“But when in any Act, regulation or notification passed or issued prior to the day on which this Code comes into force reference is made to Act VIII. of 1859, Act XXIII. of 1861, or ‘The Code of Civil Procedure’ or to any other Act hereby repealed, such reference shall so far as may be practicable be read as applying to this Code or the corresponding part thereof.”

The effect of these sections is to make the notification of 1867 relative to the application of the then existing Codes of Civil Procedure to the Sonthal Parganas read as though it applied to the Civil Procedure Act, 1877. But it will be remembered that such application had been restricted by the Sonthal Parganas Regulation of 1872 to suits brought for amounts above Rs. 1,000 in courts established under Act VI. of 1871. The combined effect of these provisions must be to make the Civil Procedure Act of 1877 apply in the Sonthal Parganas only to suits so brought.

The next Act is the Civil Procedure Code of 1882. In everything that is material to the

present appeal this is identical with the Civil Procedure Code, 1877. It took the place of that Act in the Sonthal Parganas to the extent that such Act was in force therein, that is to say, for suits brought for amounts above Rs. 1,000 in Courts established under Act VI. of 1871.

We now come to Regulation 5 of 1893, the short title of which is the Sonthal Parganas Justice Regulation, 1893. It made important changes in the administration of civil justice in the Sonthal Parganas. By section 5 it added to the two classes of special Courts theretofore existing in the Sonthal Parganas, named the Courts of settlement officers and the Courts of officers appointed by the Lieutenant-Governor of Bengal under section 2 of the Regulation of 1855, a third class, namely Courts established under Act XII. of 1887, known as the Bengal United Provinces and Assam Civil Courts Act, 1887, which is an Act which has taken the place of Act VI. of 1871 (which has been repealed), and all references to the last-mentioned Act must now be read as referring to it.

These definite provisions entirely remove the difficulties as to the jurisdiction within the Sonthal Parganas of Courts appointed under the Bengal United Provinces and Assam Civil Courts Act, 1887, or its predecessor, the Bengal Civil Courts Act, 1871. It remains to see what suits are put within the cognizance of these Courts. By section 9 the jurisdiction of a Judge of one of these Courts extends to—

“Suits of which the value exceeds Rs. 1,000 and which are not excluded from his cognizance by the Sonthal Parganas Settlement Regulation, or by any other law for the time being in force.”

Their Lordships are clearly of opinion that these words of exclusion refer to section 5 of the Regulation of 1872, which excluded from the cognizance of any such Court suits relating to

land, the settlement of which had not been finished and duly notified, and placed them exclusively in the hands of settlement officers or officers appointed by the Lieutenant-Governor of Bengal under section 2 of the Regulation of 1855. This exclusive jurisdiction is therefore maintained, and suits in regard to land, which is not in districts that have been notified as being completely settled, are not within the cognizance of the ordinary Courts, no matter what may be the value of the matter in dispute. It is not necessary for the purpose of this appeal to examine further into the jurisdiction of Courts established under these provisions, because the Court of Baghalpur, in which the present action was brought, is not one of such Courts.

The result of this examination of the Acts and Regulations applicable to the Sonthal Parganas is that at the date when this suit was commenced no suit could lie in any Court established under Act VI. of 1871, or under the Act which has taken its place, namely, the Bengal United Provinces and Assam Civil Courts Act, 1887, in regard to any land or any interest in or arising out of any land, or for the rent or profits of any land, but such suits must have been brought before settlement officers, or Courts of officers appointed by the Lieutenant-Governor of Bengal under section 2 of the Sonthal Parganas Act, 1855, and the Sonthal Parganas Justice Regulation Act, 1893, Part 2, so long as the land had not been settled and the settlement declared by a notification in the Calcutta Gazette to have been completed and concluded. And, further, that whatever be the Court that has jurisdiction to decide cases within the Sonthal Parganas, and is exercising that jurisdiction, it must observe the two rules relating to usury above referred to.

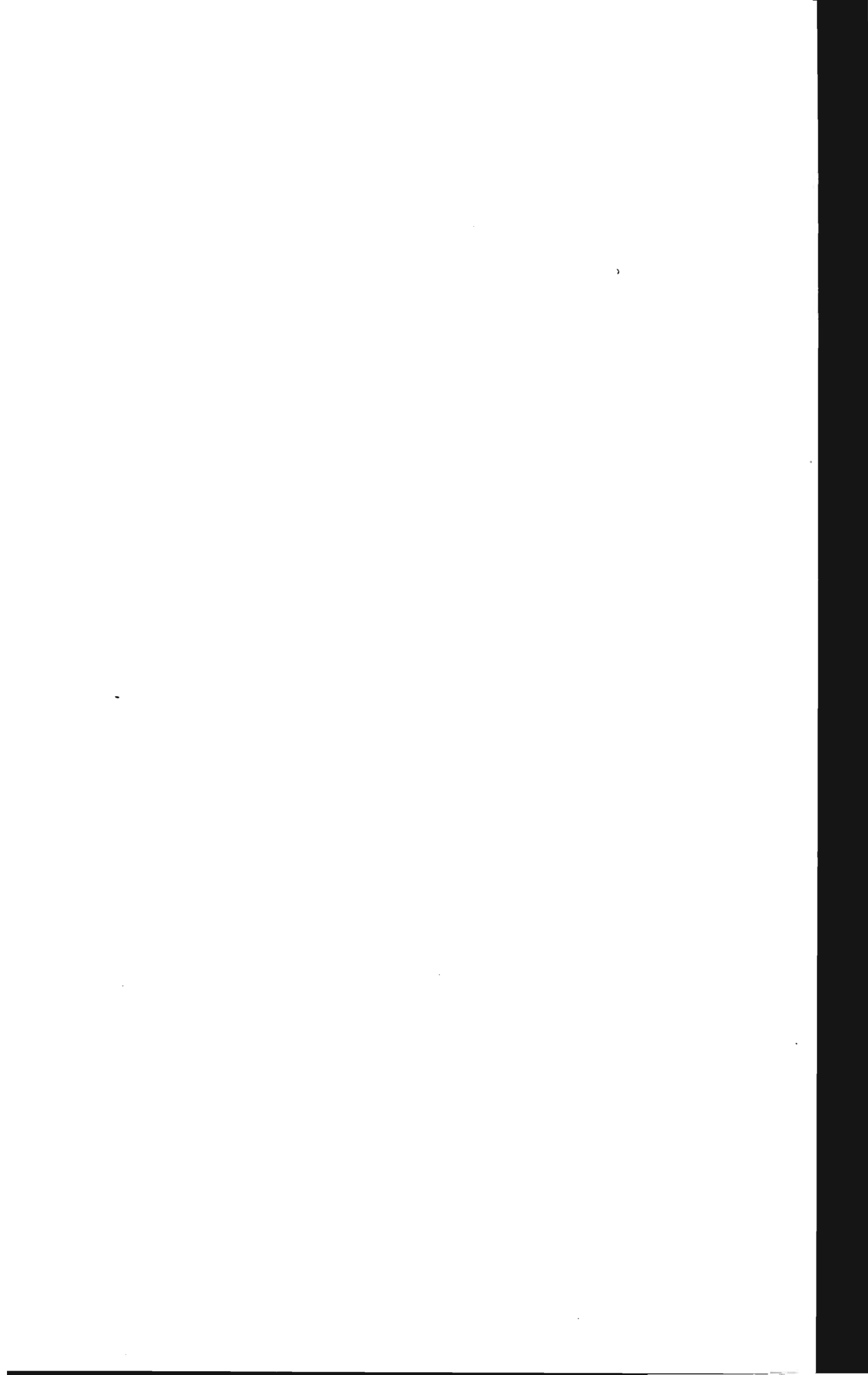
It is necessary therefore to ascertain what was the exact position (so far as settlement is concerned) of the land included in the mortgage bond at the date of the commencement of the action in which the present appeal is brought, namely, June 20th, 1904. The information supplied to their Lordships by the parties, as to the notifications appearing in the Calcutta Gazette show conclusively that, although portions of the lands mortgaged had been settled, and notification had been duly made that such settlement had been completed, at dates prior to the institution of the suit, other portions were not so settled. It is clear, therefore, that the suit came within the provisions of section 5 of the Sonthal Parganas Settlement Regulation, 1872, relating to the exclusive jurisdiction of officers appointed by the Lieutenant-Governor of Bengal, or by settlement officers, inasmuch as it related to land which had not been settled, or the settlement of which had not been declared by a notification in the Calcutta Gazette to have been completed and concluded. The Court of Baghalpur had therefore no jurisdiction to entertain the suit, and this appeal must be allowed.

Reliance was placed by counsel for the Respondent on the stipulation in the bond that the mortgagees might enforce it in the Court of Bhagalpur. Their Lordships are of opinion that this has no effect. That Court had no jurisdiction to entertain the suit which, beyond question, was a suit in regard to land in the Sonthal Parganas, and that being so the parties could not give it the necessary jurisdiction by consent. To do so would be to nullify the express prohibition of section 5 of the Sonthal Parganas Regulation, 1872, which was binding on any Court having jurisdiction

in the Sonthal Parganas in the exercise of such jurisdiction.

Their Lordships are also of opinion that, apart from the question of jurisdiction, any Court dealing with the subject matter of the suit would be bound to give full force and effect to the provisions of section 6 of the Sonthal Parganas Settlement Regulation, 1872, relating to usury, and therefore to have refused to decree any compound interest arising from any intermediate adjustment of interest, or an amount of total interest exceeding the principal of the original debt or loan.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be allowed, and the action dismissed with costs in both courts. The Respondents must pay the costs of this Appeal. The two subsidiary Appeals fall with the dismissal of the Action, and the costs connected with them will form part of the costs of the whole proceedings, which the Respondents must bear.



In the Privy Council.

MAHA PRASAD SINGH AND OTHERS,

v.

RAMANI MOHAN SINGH.

SURENDRA MOHAN SINGH AND
OTHERS,

v.

MAHA PRASAD SINGH AND OTHERS.

RAMANI MOHAN SINGH AND OTHERS,

v.

MAHA PRASAD SINGH AND OTHERS.

DELIVERED BY LORD MOUTTON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.