*Privy Council Appeal No. 9 of 1946*

**The Bank of Commerce, Limited, Khulna - - - *Appellant***

*v.*

**Amulya Krishna Basu Roy Chowdhury and others - *Respondents***

**and**

**The Advocate-General of Bengal - - - - *Intervener***

(*Consolidated Appeals*)

FROM

**THE FEDERAL COURT OF INDIA**

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# JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH FEBRUARY, 1947

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*Present at the Hearing:*

LORD WRIGHT
LORD PORTER
LORD UTHWATT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD PORTER]

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These consolidated appeals, like those which immediately preceded them, raise the question of the validity of the Bengal Money Lenders Act, 1940. The respondent in that appeal is the appellant in this, but the borrowers in the one case differ from the borrowers in the other. The facts and circumstances in either appeal are sufficiently similar to raise precisely the same questions of principle save in one particular. In the present appeal the borrowers had all been sued to judgment upon the promissory notes which they had signed whereas in the former they had not.

On the strength of this circumstance the Federal Court held that no question arose as to liability upon promissory notes. The actions had originally been instituted by several respondents against the appellant before the Subordinate Judge at Khulna under section 36 of the impugned Act claiming to reopen the decrees passed against them in small cause Court suits in order to scale down the debts and to direct repayment of amounts that might be found to have been overpaid on taking accounts. Upon these facts all the Courts in India have held that the actions are not concerned with promissory notes, but with decrees for the payment of money. The respondent's liability in each case was said to rest upon a judgment and once judgment had been obtained all previous liability upon the promissory note was merged in the judgment. There being no question of liability upon a promissory note and no question being raised of liability in respect of banking, it was decided that in so far as concerned debts due upon a decree the Act did not invade the field reserved to the Federal Legislature by item 28 of the Federal List, unless it could be said that the Act was void as a whole.

If the Act as a whole was void because its provisions were applicable to transactions in which promissory notes formed a part even though it might also apply to those in which they do not come into consideration,

then in the view of the Federal Court the Act as a whole would be *ultra vires*. In their opinion, however, it need not be so applied. Its provisions could be taken advantage of in a case where promissory notes or banking did not come into question, but it was void where either of those matters was involved.

When therefore the liability in the promissory notes had passed into a liability under a decree as in the present consolidated cases, there was nothing to prevent the respondent suing and no reason to declare the Act void. Accordingly they held that it would be valid in cases where judgments were sought to be reopened, but invalid where no judgment had been obtained and the borrower's liability was still secured by a promissory note.

Having regard to their Lordships' decision in the previous case, they do not find it necessary to make any pronouncement as to the soundness of this view.

In this, as in the last case, they are of opinion that the pith and substance of the Act is money-lending and that therefore it is within the competence of the provincial legislature and of that legislature alone under item 27 of the Provincial List.

They will humbly advise His Majesty accordingly that the appeal should be dismissed. There will be no order as to costs.

2/47 (56832r) Wt. 8013—7 30 3/47 D.L. G. 338

In the Privy Council

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THE BANK OF COMMERCE LIMITED,
KHULNA

*v.*

AMULYA KRISHNA BASU ROY
CHOWDHURY AND OTHERS

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DELIVERED BY LORD PORTER

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