

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Rajah Partab Bahadur Singh v. Rajah Chitpal Singh and others (Nos. 2 and 3 of 1888), consolidated with the appeals of Rajah Chitpal Singh and others v. Rajah Partab Bahadur Singh (Nos. 6 and 7 of 1888) which were not prosecuted, from the Court of the Judicial Commissoner of Oudh, Lucknow, delivered 11th November 1891.

Present :

LORD WATSON.*

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Lord Shand.*]

THIS case is the sequel, or more properly the second part, of a case which has already occupied their Lordships' attention, and which is reported in the 11th Law Reports, Indian Appeals, at page 211.

The creditor, Rajah Ajit, who is now represented by the Appellant, sued his debtor Rajah Bijai, now represented by Rajah Chitpal and others, for payment of certain sums which were stated to be vouched by a number of different securities. The Court below had given him a decree for a very considerable amount. As the result of the argument before their Lordships, this decree was recalled, and the case was remitted with certain directions to the Court below; and as a key to the meaning of these directions, it seems desirable to read the following passage in the judgment then delivered by this Board: "It is true that there is no direct

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“ evidence in the record of a conspiracy between
 “ Ajit and Wahaj-ud-din ; but they acted together
 “ against the interest of this unfortunate
 “ talookdar,” the talookdar being the Defendant
 in the case. “ His agent induced him to sign a
 “ number of bonds for sums of money which
 “ have been found not to be necessary for the
 “ purposes of the estate ; and Ajit, whose duty
 “ as a relative, a friend, and a neighbour of
 “ Bijai, a man of weak intellect, was to have
 “ warned Bijai against the proceedings which
 “ were going on to his own ruin, so far from
 “ doing this, acts in concert with the unfaithful
 “ steward, and not only does he act in concert
 “ with him, but he profits principally by their
 “ joint transactions.”

That being the view which their Lordships then took of the relation between the parties, they were unable to affirm the judgment giving decree for the large sums to which reference has been made, and a remit was made to the Court below to take the following accounts :—“ 1. An account of such sums advanced
 “ or paid by Rajah Ajit Singh by way
 “ of consideration for the said deed of the
 “ 26th May 1879, as shall be proved to have
 “ been paid to and received by Rajah Bijai
 “ Bahadur Singh personally. 2. An account of
 “ such sums advanced or paid by Rajah Ajit
 “ Singh by way of consideration for the same
 “ deed as Wahaj-ud-deen would have been
 “ justified in borrowing in course of a prudent
 “ management of Rajah Bijai Bahadur Singh’s
 “ estate. 3. An account of what is due upon
 “ such advances or payments for simple interest
 “ at 8 per cent. from the date of each advance or
 “ payment to the time of repayment.”

The two classes of advances then which were to be allowed were, first, advances which the creditor was able to prove had been paid to and

received by Bijai Bahadur personally; secondly, advances which the creditor was able to show Wahaj-ud-din, the manager, would have been justified in borrowing in the course of a prudent management of his principal's estate. That being so, an investigation has taken place in the Court below, and the questions which are now raised are really questions of accounting, but to some extent they raise questions of principle. Their Lordships, as the result of full argument, have come to the conclusion that there is really no difficulty attending the decision of the case, that the judgment of the Judicial Commissioner is sound, and that it has been put upon grounds which their Lordships are prepared to affirm.

The creditor, the Plaintiff, has been allowed credit for all the sums which have been paid to and received by Rajah Bijai Bahadur personally. It is said there is one sum which it has been proved was paid to him personally which has not been allowed. That will be spoken of immediately. But the main controversy has arisen upon the second branch of the remit, as to whether sums under that branch have been improperly disallowed.

It will be necessary, shortly to notice the items *seriatim*. The judgment of the Judicial Commissioner, so far as it is complained of, is to be found on page 40 of what is called record No. 3; and the first item objected to is this:—
 A sum of Rs. 6,000, borrowed on the 2nd February 1877. The facts stated about it are these:
 “ Bond executed in favour of Bisheshar Singh
 “ and Sheo Dayal Singh, servants of Rajah Ajit
 “ Singh, registered at the instance of Wahajuddin,
 “ who received the consideration before the
 “ Sub-Registrar. The Munsarim allowed Rs. 4220
 “ 7 9, and disallowed the remainder, and
 “ the District Judge endorsed the Munsarim's
 “ report. Rs. 4221 7 9 were paid into the

“ Partabgarh Tahsil in payment of the Government revenue.” The learned Judge adds: “ For such payment Wahajuddin had no business to borrow money in February, just after the rents from the tenants had been realized.”

This item raises the legal question whether, upon the facts admittedly proved, the plaintiff is entitled to credit for this sum. The facts proved are these: in the first place the money was not paid to the defendant himself, but was paid to Wahajuddin; in the second place, it is shown that to the extent of Rs. 4,221 that money was applied in payment of Government revenue in connexion with the estate. Is that sufficient to entitle the plaintiff to credit? In order to settle that, it is necessary to have in view the terms of the remit, which have already been set out. It appears to their Lordships to be quite clear that the onus of proving that any particular sum or advance falls within the second heading of the remit, lies on the creditor; and the only proof that is here advanced is that money did find its way into this manager's hands, whose management was distrusted by their Lordships in their former judgment; and, secondly, that it was used partly by way of payment of revenue; but as to the necessity for resorting to borrowing money for payment of revenue, or as to any state of facts that could justify that, so as to make it a loan obtained in the course of a prudent management of the estate, there is no evidence whatever. It must be assumed, in the first instance, that a manager having the whole rents of an estate to deal with would have the means of at least meeting the necessary payments of Government revenue, and if that presumption is to be met the creditor must bring proof to overcome it. So far from there being evidence of that kind, as pointed out by the Judicial Commissioner, there is a great deal to show the

contrary. He refers to the fact that it had been shown that Wahaj-ud-din was an imprudent and dishonest manager, and that, according to his own deposition, he had been wasting the money of the estate in supporting a horde of relations, friends, and dependants, from the income of his master's property. It appears to their Lordships to be quite clear, therefore, that upon this item of the account, the mere circumstance that the money in part found its way in payment of Government revenue is no proof that there was a necessity for its so being used, or that this was done in the course of a prudent management. The judgment given on this item seems really to settle the main points in the case, because the others generally fall under the same principle.

The next item mentioned is:—"Rs. 2,120 borrowed by Wahajuddin on a promissory note signed by himself." As to that the Judicial Commissioner says that there is "no proof whatever that he borrowed this money in the real interest of the estate." Counsel for the Appellant pointed out, no doubt, that this sum was mentioned in one of the bonds which had been granted, but the fact of its being there mentioned was no evidence whatever that the money, although received by Wahaj-ud-din, had been borrowed in the interest of the estate, or in the course of a reasonable management. This item was not only disallowed by the Munsarim in his report but also by the District Judge, and by the Judicial Commissioner; and there is, therefore, a concurrent finding of fact by those two Judges, which their Lordships would not disturb—that there is no proof that the money was required for the purposes of a prudent management of the estate.

The next item is:—"Rs. 2,000 advanced on the 17th February 1878 on a promissory note." That money was stated by the Judicial Com-

missioner to have been "realised by Wahajuddin, " who devoted Rs. 1,000 to the payment of " Government revenue," and was disallowed by him, also for the reason which he had previously given, and which their Lordships think sound. These items dispose of the case so far as regards the main suit.

In the cross suit there are only two items that have been brought under their Lordships' notice. In regard to the first of these, item *b*, a sum of Rs. 11,773 10, their Lordships think that it stands precisely in the same position as the other items already referred to, having merely this to support it, that it is proved the money went in payment of Government revenue. There is no proof whatever that it was required to be so used; or that there were not rents sufficient to have paid the whole of the Government revenue; and therefore this item is disposed of by what has been already said.

There remains only the item *c*, with respect to which it is said there is a speciality, to take it out of the rule with regard to the other items. What is said about it is this. It is mentioned in the deed of the 26th May 1879, as having been received in cash by Rajah Bijai Bahadur, but the Judicial Commissioner says in regard to it: " On looking over the evidence, I am satisfied " in coming to the same conclusion as the District " Judge as to Wahajuddin being the real recipient " of the whole of this money, amounting to " Rs. 20,445. He can only satisfactorily account " for Rs. 15,510 10 paid into the Government " Treasury as revenue; but, as I have said before, " money should not have been borrowed on that " account."

Now in regard to this item it has been submitted by the Counsel for the Appellant, that there is evidence to show that it was paid to Bijai Bahadur himself, and what is relied on is simply a narra-

tive in one of the deeds, together with a statement by the Registrar that the correctness of what was stated in the deed had been affirmed by Bijai Bahadur. The question whether the money really was ever paid to Bijai Bahadur personally, seems to have been made the subject of very careful investigation, in the first place before the Munsarim, and again by the Judge of first instance and finally by the Judicial Commissioner. What the Munsarim says about it is this. He presents a report to the Court in which he classifies the moneys. He puts under one schedule all the money that he is satisfied was paid personally to Bijai Bahadur; in the second schedule he puts the money that was not paid to Bijai Bahadur personally, but was paid to Wahaj-ud-din, and that item of Rs. 20,445 is entered in the second schedule, the reason given being this:—"As to non receipt of money by Bijai Bahadur himself, see evidence of Registrar and finding of Court at page 267, Rs. 15,510 10 paid into treasury, as proved by Dakhila at page 53, remainder not proved beyond Wahajuddin's account, which is untrustworthy." Accordingly he holds upon the evidence before him, having gone into the whole matter, that, although no doubt Rs. 15,510 10 of this money found its way to the treasury, yet it was all money that was not paid to Bijai personally but to Wahaj-ud-din. That report of the Munsarim was approved of by the Judge of first instance, and by the Judicial Commissioner. There is therefore the concurrent finding of fact by those two Judges, that this money was paid to Wahaj-ud-din, and it must come under the principles to be applied to money so paid. It has not been proved that any part of it was expended in a course of prudent management of the estate by him, and accordingly it has been properly disallowed.

On these grounds their Lordships will humbly advise Her Majesty to affirm the judgments of the Judicial Commissioner and dismiss the principal appeals. The cross appeals must stand dismissed for non-prosecution. Their Lordships make no order as to costs.