

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Muneshar Bakhsh Singh v. Shadi Lal and others, from the Court of the Judicial Commissioner of Oudh ; delivered the 11th May, 1909.*

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Present at the Hearing :

LORD ATKINSON.

LORD COLLINS.

LORD SHAW.

SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

This is an Appeal by the Defendant, a disqualified proprietor under the provisions of the Oudh Land Revenue Act 1876, against the judgment of the Court of the Judicial Commissioner of Oudh, affirming a decision of the Subordinate Judge of Bahraich in favour of the Plaintiffs suing to recover money secured by a bond dated the 27th January 1896, whereby the Defendant contracted to pay within two years to the Plaintiffs (or their predecessors in title) a sum of Rs.9,950 with interest and compound interest at the rate of Rs.18 per cent. per annum, with yearly rests. There was practically no consideration paid at the time of the execution of the bond, which was given in renewal of a previous one dated the 14th September 1889, the

[21] P.C.J. 43.—L. & M.—125—30/3/00. Wt. 98.

consideration for which was an advance of Rs. 4,000. The Raja was a person of extravagant habits, and when his estate was placed under the Court of Wards, as it was, at his own instance, in August 1886, his debts were said to have amounted to about seven or eight lakhs of rupees. The bond in suit was given without the knowledge or consent of the Court after his estate had been taken over. The defence was that, in the circumstances, the bond ought to be treated as given under undue influence and as unconscionable. It was assumed both in the Court of first instance and in the Court of the Judicial Commissioner that the onus of proving undue influence was upon the Appellant. In this respect the said decisions are directly opposed to that of this Board in the case of *Dhanipal Das v. Raja Maneshwar Bakhsh Singh*, the present Appellant (33 I.A. 118), decided in respect of another loan by the then Plaintiff (one Auseri Lal) to the present Appellant while under disqualification. In that case—which was as nearly as possible identical in its facts with that under appeal, except that the moneylender was a different person, though the borrower was the same—their Lordships in referring to the evidence, say (at p. 126):—

“ The fair result . . . is that the Respondent,  
 “ through his improvidence, was in urgent need of  
 “ money, and owing to his estate being under the care  
 “ of the Court of Wards, he was in a helpless  
 “ position. There was no fraud in the matter, and no  
 “ pressure was put upon the Respondent by Auseri  
 “ Lal . . . to induce him to accept the conditions  
 “ offered to him . . . But it must be taken that  
 “ the Respondent was compelled by his circumstances  
 “ to accept the terms which were offered to him.  
 “ . . . Their Lordships are of opinion that,  
 “ although the Respondent was left free to contract  
 “ debt, yet he was under a peculiar disability, and

“ placed in a position of helplessness by the fact of  
 “ his estate being under the control of the Court of  
 “ Wards, and they must assume that Auseri Lal, who  
 “ had known the Respondent for some 50 years, was  
 “ aware of it. They are therefore of opinion that  
 “ the position of the parties was such that Auseri  
 “ Lal was ‘in a position to dominate the will’ of the  
 “ Respondent within the meaning of the amended  
 “ Section 16 of the Indian Contract Act. It remains  
 “ to be seen whether Auseri Lal used that position  
 “ to obtain an unfair advantage over the Respondent.”

Their Lordships then draw the conclusion that the Subordinate Judge, who had found that simple interest at 18 per cent. per annum was not high, must be taken to have found that the charging of compound interest in the circumstances was unconscionable, a conclusion in which they deemed the Court of the Judicial Commissioner to have concurred, and, in the result, their Lordships held that the lender used his position to demand and obtain from the Respondent more onerous terms than were reasonable, and that the bond sued on must be set aside. It is true that the learned Judges in the present case took a different view of the relative position of the parties under s. 16 of the Indian Contract Act, 1872, which in itself would be sufficient to account for their differing conclusion as to the proper inference to be drawn from facts in all essential points identical with those in the earlier case. Moreover, the Judicial Commissioners seemed to regard themselves as free to criticise, and apparently not to follow, the decision of their predecessors in the same Court in *Dhanipal Das's* case. Indeed, the main reasoning of both the learned Judges seems to be addressed to impugning the position expressly asserted in the judgment of this Board that, in the case of a disqualified proprietor whose estate was under the

control of the Court of Wards, a lender who knew the facts was *primâ facie* "in a position to dominate the will" of the borrower within the meaning of the amended s. 16 of the Indian Contract Act. Of course, at the time when their judgments were delivered in this case, the judgment of this Board in *Dhanipal Das's* case had not yet been delivered. Dealing, then, with this case on the lines laid down by this Board, their Lordships have no hesitation in differing from the conclusions arrived at by the learned Judges in the Courts below, and are satisfied that in this case also the borrower was placed in such a condition of helplessness that the lender was "in a position to dominate his will," and that he used that position to obtain an unfair advantage over the Appellant.

Their Lordships will humbly advise His Majesty that the Appeal be allowed, that the Decree of the Court of the Judicial Commissioner of Oudh and the Decree of the Court of the Subordinate Judge of Bahraich be discharged, and that instead thereof it be ordered that the bond of the 27th January 1896 be set aside and that the Appellant pay to the Respondents the sum of Rs.4,000 with simple interest at the rate of 18 per cent. a year from the 14th September 1889 to the date of payment, with proportionate costs in both Courts below on the amount decreed, to be settled by the Judicial Commissioner in case of difference, and that as to the rest each party bear his own costs.

The Respondents will pay the costs of the Appeal.