

*Privy Council Appeal No. 88 of 1938  
Oudh Appeals Nos. 27 and 29 of 1936*

Babu Nisar Ahmad Khan - - - - - *Appellant*  
v.  
Babu Raja Mohan Manucha and others - - - - - *Respondents*  
and  
Babu Raja Mohan Manucha and others - - - - - *Appellants*  
v.  
Babu Nisar Ahmad Khan - - - - - *Respondent*

*Consolidated Appeals*

FROM

THE CHIEF COURT OF OUDH, LUCKNOW

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 18th JULY, 1940

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*Present at the Hearing :*

LORD RUSSELL OF KILLOWEN

SIR LANCELOT SANDERSON

MR. M. R. JAYAKAR

[*Delivered by MR. M. R. JAYAKAR*]

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These proceedings arise out of two mortgage deeds exhibits 3 and 5 executed on 18th January 1919 and 14th August 1919 respectively. The respondents' father Motilal was the mortgagee and the appellant's father Yar Mohammad Khan the mortgagor.

The events which led to the present litigation are as follows—

By a mortgage deed dated 8th July 1908 Mohammad Ewaz Ali Khan, the appellant's grandfather, who was the Taluqdar of Mahona, District Sultanpur, in Oudh, mortgaged his estate, consisting of twenty-six villages, to the Allahabad Bank Limited, for securing payment of a sum of Rs.150,000 with compound interest at the rate of 7 per cent. per annum with half-yearly rests. In 1914, the Bank instituted a suit against the mortgagor and certain transferees from him, including his wife Saifuran Bibi, and on 12th April 1915 a preliminary decree was passed for Rs.177,001.13.9 with interest and costs, to be paid by 12th October 1915, and, in default, the mortgaged property was to be sold. On 24th July, 1915, the mortgagor died and his son Yar Mohammad Khan succeeded to the taluqa. On 17th June 1916 a final decree was passed for the amount of Rs.205,382.12.6 against Yar Mohammad Khan and others. The Bank instituted

proceedings for executing the decree in the Court of the Subordinate Judge at Sultanpur, who, on 5th February 1917 transferred the case to the Court of the Deputy Commissioner at Sultanpur for execution under the provisions of section 68 of the Civil Procedure Code (1908). It may be noted that the Deputy Commissioner had the powers of a Collector under that section.

On 6th March 1918, Yar Mohammad Khan applied to the Deputy Commissioner for leave to pay the decretal amount by instalments or under some other arrangement intended to save the estate. Thereupon, a revenue officer, called the sale officer, reported to the Deputy Commissioner on 11th June 1918 that the debt could be discharged either by taking the property into direct management or by mortgaging or letting it in perpetuity. Inquiries about the last two alternatives were then instituted by the Deputy Commissioner. Consequent on this, applications were made before the Deputy Commissioner by various persons, offering to lease the property or suggesting arrangements under which the debt could be paid off.

On 11th September 1918, Yar Mohammad Khan, by a power of attorney signed by his general agent Sahib Rai, appointed Manoharlal, a well-known pleader of Fyzabad, his vakil in the execution proceedings. On the same day, when the matter came before the Deputy Commissioner, Yar Mohammad Khan was represented by three pleaders, including Manoharlal, and also by his general agent, Sahib Rai; and the various persons who desired to lease the property were represented by vakils. A statement of Sahib Rai was recorded, and, by an order of this date, the application of Yar Mohammad Khan for permission to mortgage the property was granted.

Thereupon, Motilal, the son of Manoharlal, paid Rs.150,000 into court and twenty villages out of the twenty-six were mortgaged to him by Yar Mohammad Khan by a document of 18th January 1919, exhibit 3, to secure payment of the sum with compound interest at 8 per cent. per annum with six-monthly rests.

Out of the remaining six villages, one was sold for Rs.45,000 and another (Gadaryadih) for Rs.60,000. The latter village was in the possession of Saifuran Bibi, who raised a claim to it, and, for satisfying it, Yar Mohammad Khan desired to cancel its sale by repaying to the purchaser the price he had paid. For that purpose, Yar Mohammad Khan borrowed another sum of Rs.70,000 from Motilal on the security of a further charge on the twenty villages. The document relating to this mortgage is exhibit 5 and is dated 14th August 1919. The written permission of the Deputy Commissioner was not obtained for this mortgage. With the moneys borrowed from Motilal under exhibits 3 and 5, the Bank's decree was paid off. Gadaryadih and the other four villages were then exempted from sale and, the Bank's decree having been satisfied, the execution proceedings were returned to the court and came to an end on 31st May 1920.

Yar Mohammad Khan died on 31st January 1924, and his son, the appellant, succeeded to the taluq. Interest was duly paid for a time by Yar Mohammad Khan and the appellant on the principal sums owing in respect of the mortgages exhibits 3 and 5 but default having occurred in the subsequent payments of the principal amount and of the interest, on 30th April 1932, Motilal instituted the present suit against the appellant in the Court of the Additional Subordinate Judge, Sultanpur. He claimed payment of the sum of Rs.226,170.5.0 due in respect of the mortgages exhibits 3 and 5, and in default of payment asked for a sale of the mortgaged property (the twenty villages).

The claim was contested on various grounds, and the Subordinate Judge framed certain issues, of which only the following are now material:—

“(4) (a) Was Manoharlal the legal adviser of Yar Mohammad Khan at the time of exhibits 3 and 5? (b) If so, were these transactions entered into in good faith?

(6) (a) Were exhibits 3 and 5 executed with the permission of the Collector of Sultanpur? (b) If so; what is its effect? (c) If not, what is its effect?

(10) Is the interest stipulated in the mortgage deeds unfair and extortionate?”

It may be noticed that an issue (No. 5) was raised, whether the mortgaged deeds were procured by the exercise of undue influence on the part of Manoharlal, but it was not pressed at the hearing.

Motilal died pending the suit, and the names of his sons the present respondents were substituted in his place.

On 30th October 1933, the Subordinate Judge gave judgment. He held (a) that at the time when the two mortgage deeds were executed Manoharlal was the pleader and legal adviser of Yar Mohammad Khan and that a fiduciary relationship consequently existed between them; (b) that in view of such relationship, the onus rested upon the plaintiffs to prove that the transactions in question were entered into in good faith, and that they had totally failed to discharge the onus; (c) that, since Manoharlal had committed a breach of duty by which he had obtained an undue or unconscionable advantage, he had been guilty of fraud; (d) that the Deputy Commissioner's permission had been duly obtained for the execution of exhibit 3, as required by paragraph II, schedule 3, of the Civil Procedure Code, but that no such permission had been obtained for the execution of exhibit 5 and that deed was therefore void *ab initio*; (e) that exhibit 3 was voidable but plaintiffs were entitled to recover Rs.150,000 with simple interest at 6 per cent. per annum under the provisions of section 65 of the Indian Contract Act; (f) that since exhibit 5 was void *ab initio*, the defendant was not liable to make any payment thereunder; (g) that the rate of interest was not unfair or extortionate.

On the above findings, the Subordinate Judge dismissed the suit for sale but gave a decree to the respondents for Rs.150,000 (the amount of the mortgage exhibit 3) with

simple interest at 6 per cent. per annum from 18th January 1919, the date of exhibit 3, until the date of the suit, subject to the condition that the payments made by the appellant and his father under both the mortgage deeds should be set off. On calculation it was found that the amounts paid by the appellant exceeded those due to the respondents. The latter were therefore ordered to pay the appellant's full costs.

The respondents appealed to the Chief Court and on 18th August 1936 the learned judges of that court delivered judgment in which they upheld the findings of the Subordinate Judge on issues (4) (a), (4) (b) and (6). As regards repayment of the amounts lent under exhibit 5, they differed from the Subordinate Judge's view and ordered payment of the amount due under it. Their reasons, *inter alia*, were (a) that in the circumstances of the case exhibit 5 fell within the words "discovered to be void" occurring in section 65; (b) that though the deed failed as a mortgage, as the defendant sought equity he must do equity; (c) that the deed contained a personal covenant to pay, the enforcement of which was not barred by limitation. Accordingly, they confirmed the decree of the Subordinate Judge with respect to the refund of the amounts due under exhibit 3, but modified it by ordering the appellant to repay the amount due under exhibit 5, at the same rate of interest, from and up to the same dates and subject to the same conditions as in the case of exhibit 3. Interest *pendente lite* and future interest was allowed at 3 per cent. per annum on any sums which might be found due after calculations had been made in accordance with the direction contained in the decree. In the end, they passed a decree for the respondent for the amount of Rs.162,370.9.9.

Both parties have appealed to His Majesty in Council. The two appeals were consolidated and heard together.

The first question argued on behalf of the appellant was that as the suit was for sale and was dismissed, the courts below had no power to pass a decree for the repayment of the money due under the mortgages. Apart from the reasons mentioned in the Chief Court's judgment, this argument loses sight of the fact that the plaintiffs in their prayer (a) asked for a repayment of the amounts due on the mortgages, and a sale in default of it. There was also a prayer (d) asking for such further and other relief as the court might think fit. Their Lordships are therefore of opinion that the courts in Oudh (hereinafter referred to as the two courts) were justified in making the order of repayment.

It was also urged that the enforcement of the personal covenant to pay contained in the deeds was barred by limitation at the date of the suit. This view is unsustainable, for the covenant being in writing registered, the relevant article is 116 of the Indian Limitation Act 1908, which provides for a period of six years, and the suit was well within that period.

It was next contended that exhibit 5, being void *ab initio*, section 65 of the Indian Contract Act had no application. Their Lordships are, however, satisfied that the

grounds on which the appellate court rested its opinion are sound, and there is enough justification for the view that the deed exhibit 5 is one which fell within the words "discovered to be void" in that section.

Their Lordships, therefore, think that there is no substance in the contentions raised on behalf of the appellant and his appeal must fail.

In the respondents' appeal, the main attack was directed against the findings on issues (4) (a) and (b) and the effect on exhibit 5 of the finding on issue (6). It was argued that in arriving at the findings on issue (4) the two courts had misconceived the true nature of exhibits 3 and 5 and of the circumstances relating to them, that the transactions in reality were between Motilal and Yar Mohammad Khan and did not therefore fall within the principle governing transactions between parties one of whom stands to the other in a position of active confidence.

Their Lordships had the benefit of a careful and elaborate argument from the respondents' counsel, and, on a review of the circumstances, they are of opinion that the respondents are entitled to succeed in their contentions. There is no doubt that if the transactions were really between Motilal as the mortgagee and Yar Mohammad Khan as the mortgagor, there was no occasion for the application of the principle embodied in section III of the Indian Evidence Act. As the two courts have relied on this section, it is necessary to set out its terms, which are as follows:—

"Where there is a question as to the good faith of a transaction between parties one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence."

Illustration (a) concerns the case of a sale by a client to his attorney. The principle of the rule embodied in this section, which was called "the great rule of the court," was explained by Eldon L.C., in the case of *Gibson v. Jeyes* (1801) 6 Ves. Jun., pp. 266, 278, as follows:—

"He who bargains in a matter of advantage with a person placing confidence in him is bound to show that a reasonable use has been made of that confidence, a rule applying to trustees, attorneys, or anyone else."

It is therefore necessary to enquire who were the parties to the mortgages exhibits 3 and 5 and whether one of them (the mortgagee) stood in the position of active confidence to the other (the mortgagor). The two courts have proceeded on the assumption that Manoharlal was the mortgagee and as he was the mortgagor's wakil in the execution proceedings, he stood in a position of active confidence to the mortgagor and the transactions fell within the provisions of the section. If, on the other hand, Motilal was the mortgagee as the deeds state and the proceedings before the Deputy Commissioner make clear, the case would not fall within the rule embodied in the section, for it is not urged, nor is there any evidence, that Motilal ever stood in a position of active confidence to Yar Mohammad Khan. The two courts appear to be in great confusion on this question.

In many passages in their judgment, to which their Lordships' attention was invited, they take the view that the money belonged to the joint family of which Manoharlal was the karta. Some other passages, on the other hand, clearly indicate their view that the money was Manoharlal's own, advanced through his son as his benamidar.

These two are clearly distinct positions, and the two courts appear to hover between them. This is probably the result of a confusion caused by what was supposed to be an admission in the pleadings that Manoharlal and his sons, including Motilal, formed a joint Hindu family. This may lead to a presumption that the money advanced on the mortgage was joint family property, but, as Mayne points out in his *Hindu Law* (9th edition, pp. 374-376) this presumption is very slender and has to be taken along with the other facts proved or admitted. Besides, even in the case of a joint Hindu family there is no presumption that it possesses joint property, or any property at all. This has to be shown by affirmative evidence. Such evidence in this case proves that the money advanced on the two mortgages really belonged to Motilal as his own property. In the documents (exhibit 3 and exhibit 5) Motilal was mentioned as the mortgagee, and in the proceedings before the Deputy Commissioner, whenever any reference was made to the mortgagee, Motilal's name was mentioned as the person advancing the money. Manoharlal had long been dead before the suit, but Motilal was alive and was examined. His deposition is clear on the question. He carries on business on an extensive scale, pays an income tax of Rs.10,000 a year, and owns, as his property, rice and oil mills and an ice factory. In the very beginning of his cross-examination, he referred to his account books (exhibits 26-30) which include the accounts of the mortgage transactions in issue, and stated that the accounts related to his personal transactions and not to those of anyone else, that the entries in the account books were correct and were in the hand of his mukhtiar, that his father (Manoharlal) had a general power of attorney from him, that his business was separate. He supported this by a reference to his account books (exhibits 26-30) in which the transactions in issue are mentioned and the interest paid from time to time is credited through the hands of the mortgagor's agents. The payments were made on dates when Yar Mohammad Khan was alive, and include those made by him during his lifetime and by the appellant after his death. It is to be noted that though Motilal stated his case with precision and emphasis, there was no cross-examination on the point.

The whole of this evidence appears to have escaped the attention of the two courts. It may be so because his evidence was taken in the trial court before a different Subordinate Judge from the one who ultimately delivered the judgment. Their Lordships asked the appellant's counsel whether he could point out any passage in either of the judgments, tending to show that the judges had this evidence in mind and brushed it aside as untruthful. Counsel could

point to no such reference. Their Lordships have examined Motilal's evidence, and, in their opinion, it bears the impress of truth. If this is so, the whole of the superstructure which the two courts have raised upon the supposition that the money belonged to Manoharlal or his joint family, crumbles to the ground.

This would be enough to entitle the respondents to obtain a reversal of the findings of the two courts on issues (4) (a) and (b). The respondents' counsel, however, rested his case on an alternative footing and urged that even on the assumption that Manoharlal, or his joint family, was the mortgagee, the evidence disclosed no ground justifying the condemnation by the two courts of the transactions in exhibits 3 and 5 and of Manoharlal's connection with them. Their Lordship's were accordingly invited to consider the detailed evidence connected with the transactions in exhibits 3 and 5. After carefully considering it, their Lordships have come to the conclusion that there is nothing either in the circumstances antecedent to these transactions or in those relating to their execution and thereafter, which shows that the mortgages were obtained by Manoharlal in bad faith, or that he took any unfair advantage of the mortgagor to secure onerous or unconscionable terms. Apart from the fact that this argument was presented as an alternative one, their Lordships felt it necessary to examine the whole evidence because at the date of the suit, Manoharlal, an experienced and well-known pleader of Sultanpur, whose integrity was impugned, had long been dead, and therefore had no opportunity to defend himself.

On examining the circumstances relating to the inception of the two mortgages, it is clear that the mortgagor entered into them under circumstances of extreme stringency. The Bank's decree was for a very large amount, the date finally fixed for its payment had long expired and there was great danger of the property being sold in execution. Yar Mohammad Khan was anxious to retain control and management of his estate, because it was an ancestral holding and he desired to avoid the odium of having it either sold outright or leased out for long periods. In the applications made by his agent Sahib Rai and by himself before the Deputy Commissioner from time to time, there is enough indication of his desire to retain control and possession of his paternal estate. It is further to be noted that the idea of effectuating a mortgage of the property originated not with Manoharlal but with a revenue officer called the sale officer, who, in his report at an early date (11th June 1918) and long before Manoharlal came on the scene, suggested a mortgage as a means of saving the property for Yar Mohammad Khan.

Another fact which has not received adequate consideration from the two courts is that Manoharlal was appointed Yar Mohammad Khan's wakil on 11th September 1918, and that, on the same day, Yar Mohammad Khan's application to mortgage the property was granted. It is to be noted that on the latter occasion, Yar Mohammad Khan

was represented by three vakils, of whom Manoharlal, engaged on that day, was only one, and Yar Mohammad Khan had besides the advice of his trusted agent Sahib Rai, who represented him on all material occasions. The application for permission to make a mortgage of the property was granted after a statement was made by Sahib Rai before the Deputy Commissioner, indicating the advantages of having a mortgage to the exclusion of other means of raising the money. The application was granted by the Deputy Commissioner after reviewing all the circumstances. It is suggested that this was the occasion when Manoharlal should have disclosed to the Deputy Commissioner his intention to take the mortgage in the name of his son, but there is no evidence to suggest that Manoharlal had formed any such intention at that date.

Subsequently, Yar Mohammad Khan and Sahib Rai, in a document which they both signed, applied to the Deputy Commissioner, stating that they had prepared a draft of the mortgage which was attached to the document, and prayed that the draft might be passed and written permission granted for the mortgage of the property. The Deputy Commissioner thereupon reviewed the matter and accorded his sanction. He observed that the interest was undoubtedly severe but as the judgment debtor's pleader had told him that money was difficult to obtain, he gave his consent. There is no clear evidence that the pleader referred to was Manoharlal. As stated above, Yar Mohammad Khan had two other pleaders. Nor does it appear that the statement that money was difficult to obtain was a misrepresentation.

As regards the circumstances relating to the execution of exhibit 3, its recitals are material as showing the circumstances under which the mortgage was made. These recitals were substantially correct. The document was presented for registration at the office of the sub-registrar by Yar Mohammad Khan personally, who made, in the presence of the sub-registrar, his autograph signature, and also put his thumb mark. He admitted the completion of the deed after hearing and understanding the contents thereof, in the presence of the sub-registrar, who personally knew him. A week later, when the matter came before the Deputy Commissioner, Manoharlal appeared on behalf of his son Motilal. On this occasion, Sahib Rai, Nanhe Mian the son of Yar Mohammad, the agent of Saifuran Bibi, and the Bank's wakil, were also present. The mortgage deed was admitted. The amount of the mortgage money was stated to be in deposit in the Treasury, and the mortgage deed was returned to Manoharlal as the agent of his son. Permission was given to the Bank's wakil to apply for a withdrawal of the amount. The matter came again a few days later before the Deputy Commissioner. Manoharlal again appeared on behalf of his son, Sahib Rai on behalf of Yar Mohammad Khan, and the Bank was represented by its wakil. On all subsequent occasions, Manoharlal continued to appear for his son. It



was suggested that in so appearing, Manoharlal was guilty of misbehaviour. It is difficult to see the basis of this criticism or how far it affects the merits of the case. These appearances were all open and do not appear to have been disapproved by the Deputy Commissioner, or by Yar Mohammad Khan or his agent Sahib Rai, to all of whom the true facts must have been well known. Different theories might be suggested with regard to these appearances. It may be that as there were already two other vakils representing Yar Mohammad Khan and also a trusted agent Sahib Rai, the parties might have thought it desirable that Manoharlal should no longer represent the mortgagor. Manoharlal is dead and his explanation is not known. Their Lordships have not enough evidence before them to suggest that in acting as he did Manoharlal was guilty of any misbehaviour throwing light upon the merits of the transaction. It may be that, as the respondents' counsel has urged, Manoharlal's open appearance exclusively for Motilal after a certain stage of the proceedings indicates his honesty.

The subsequent story of the sale of the two villages has already been mentioned, and how the four villages were saved to the mortgagor by Motilal's advance of the Rs.70,000 on exhibit 5. This mortgage also was made and registered under circumstances indicating that it had Yar Mohammad Khan's and Sahib Rai's consent. The subsequent conduct of the parties also points to the same conclusion. Interest was paid by Yar Mohammad Khan from time to time during his lifetime, and also a part of the principal amount. After his death, the appellant did the same, until default was made and the suit brought on 30th April 1930.

It is suggested that there are at least two circumstances showing that unfair advantage was taken by Manoharlal of the mortgagor's position. The first of these, it is said, is clause 3 in exhibit 3 (which is repeated in exhibit 5) by which Yar Mohammad Khan agreed that, in addition to the interest, he should pay annually Rs.10,000 in the month of June and a like sum in the month of December, with a view to the liquidation of the debt, and that he should have no power to pay anything more and Motilal also should have no power to realise anything in excess of the amount. It is said that this clause was a fetter on the equity of redemption. Their Lordships do not take this view. It is a provision which often occurs in mortgage deeds, and in the light of the fact that Yar Mohammad Khan was an old defaulter, and also that the obligation mentioned in the clause was reciprocal, their Lordships cannot regard it as in any way onerous. The clause, besides, is immaterial for the purposes of the present dispute. The mortgagee is not seeking to enforce it, and would lose nothing if it were expunged. There is no reference to this question in the judgments of the two courts except in one place where the trial court suggests that this clause could not have been the result of the mortgagor's free will. There is no evidence in support of this suggestion. On the contrary, the clause was approved by the court and by Yar

Mohammad Khan and his trusted agent, and the loan was accepted on that basis.

The other onerous clause suggested is the rate of compound interest of 8 per cent. with half-yearly rests. On this issue, there is a clear finding of both the courts that even 11 per cent., charged on another mortgage executed shortly after exhibit 5, was not unreasonable. The 8 per cent. was only 1 per cent. more than what the Bank had charged, and exhibits 3 and 5 were besides subsequent mortgages to the Bank's, made by an old defaulter.

There is likewise no evidence in support of the suggestion which found favour with the two courts that a lease would have been more beneficial than a mortgage. A lease would certainly have been contrary to the cherished wishes of Yar Mohammad Khan to remain in possession of the property as long as he could. Amongst several proposals for leasing, there were a few for such long periods as fifteen years, and one in perpetuity. These would certainly not have suited Yar Mohammad Khan's intentions, and Manoharlal's objection to one of these proposals may be due to Yar Mohammad Khan's desire to retain possession of the property, and cannot indicate any dishonest motive on Manoharlal's part.

On a review of all these circumstances, their Lordships are of opinion that exhibits 3 and 5 were both straightforward and honest transactions and there was no justification for the aspersions cast upon Manoharlal's conduct.

Before leaving this subject, their Lordships would desire to add that transactions of mortgage between a solicitor and client to secure the repayment of money advanced at the time are not ordinarily subjected by the courts to the same jealous scrutiny as, for instance, a gift from a client to a solicitor, or purchases or sales at under-value between a solicitor and client. If the money was sorely needed and was paid, the mortgagor had its benefit, the rate of interest was reasonable, and the terms neither excessive nor onerous, their Lordships can see no reason why the transaction should not stand as a valid mortgage between the parties. The rulings relied on in the Chief Court's judgment relate to sales to or by solicitors, which, on the facts, were detrimental to the client's interest.

As to the effect of the finding on issue (6) on the validity of exhibit 5, it is admitted that the permission of the Deputy Commissioner was not obtained to this mortgage. There is no doubt that, as stated above, the transaction was beneficial to the mortgagor, but this will not affect its invalidity, under the provisions of the Civil Procedure Code. It is urged in support of its validity that this mortgage was an extra judicial proceeding and no sanction was necessary. Their Lordships cannot accept this view, having regard to the clear terms of paragraph 11. The transaction was a mortgage and therefore covered by the plain terms of the paragraph. It was next urged that the Bank's claim had been completely paid off under the circumstances mentioned above and consequently the interest which the mortgagor

had was only his equity of redemption, which was not subject to the Bank's mortgage and was therefore outside the execution proceedings and the Deputy Commissioner's power under paragraph II. The only evidence in support of this contention is Motilal's letter to the Bank, dated 1st October, 1918, in which he offered to pay the Bank's debt if the Bank would unconditionally release from its lien the twenty villages. It is not clear, however, from the terms of his letter whether the Bank was not asked only to release its claim to rank in priority to Motilal's debt. Motilal had made another proposal to purchase the decretal debt of the Bank, but there is nothing to show that this proposal was accepted. The execution proceedings continued until 31st May, 1920, and up to this date the Deputy Commissioner could exercise his powers under paragraph II. There is therefore no escape from the conclusion that under the peremptory provisions of this paragraph this mortgage must be held to be null and void.

It will, however, stand in respect of the personal liability for the money actually paid, with proper interest thereon. If the loan was *bona fide* and was actually received and the terms were not unreasonable, the mortgagee is entitled to receive payment of whatever may be due on the mortgage, with interest thereon at a reasonable rate. In the circumstances found by both the courts, 8 per cent. compound interest with half-yearly rests was not unreasonable.

The result is that the respondents are entitled to an order for repayment of the money which may be due under exhibit 3, with compound interest thereon at 8 per cent. per annum with six-monthly rests, from the date of the document up to payment, and to an order for the sale of the mortgaged property in default of payment of whatever may be found due on the taking of accounts.

As regards exhibit 5, they are entitled to a decree for repayment of the amount lent under that mortgage, with compound interest thereon at 8 per cent. with six-monthly rests, from the date of the document up to payment. All payments made by the appellant and his father under the respective mortgages will be set off on the dates they were made. The matter will accordingly be referred to the Chief Court, Oudh, for drawing up a proper decree under the directions contained in this judgment.

The respondents' appeal here is allowed and the decree of the Chief Court varied as stated above. The appellant's appeal here is dismissed. The appellant will pay the respondents' costs in the two courts and in both the appeals before this Board.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council

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DELIVERED BY

MR. M. R. JAYAKAR

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