

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Juneswar Dass v. Mahabeer Singh and
others, from the High Court of Judicature
at Fort William in Bengal; delivered
17th December 1875.*

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

THIS was an action on a security common in Bengal, called a mortgagee bond, which appears to combine in one instrument two things, a personal obligation by the maker of the bond to pay the money, and a mortgage of property by way of pledge and security. The bond in question is dated the 21st of June 1856, and was given by Baboo Ritbhunjun Singh, who is the Defendant No. 1 in the suit, to Mussumat Agur Koonwar. The consideration for the bond consists of the amounts which are stated to have been due under five previous bonds given to the Mussumat by Baboo Dyal Singh, the father of Ritbhunjun Singh. The bond recites the former bonds, and proceeds thus:—"Hence I, " the declarant, do of my own accord and " consent make myself responsible for the " sums of money covered by each of the five " above-named bonds, principal with interest, " as well as other loans, &c., in all for Com- " pany's rupees 16,511, and bind myself for " the payment of the said sum of money to " the above said lady." This part of the bond contains a personal obligation on the part of the

maker of the bond, the Defendant No. 1, to pay the money. Then are inserted the terms of the loan,—“With the consent of both
 “parties it has been agreed upon that the
 “interest should be paid as per detail given
 “below, that is, the principal with interest I
 “will pay at the rate of eight annas per cent.
 “from the date of the execution of this bond
 “to the end of Jeyt 1269 F.S., and from 1270
 “F.S. to Jeyt 1274 F.S. at the rate of
 “Rs. 1 per cent. per mensem. Accordingly
 “I hereby declare and give in writing that I
 “will positively, without any objection what-
 “ever, liquidate the said sum of money,
 “principal with interest, in the month of Jeyt
 “1274 F.S., to the aforesaid lady.” As far
 therefore as we have hitherto gone in the bond,
 the ultimate period for payment would not
 accrue until Jeyt 1274. Now comes the part
 of the instrument which creates an hypothecation
 of land:—“For the satisfaction of the lady,
 “and as security for the above sums of money,
 “I pledge and mortgage mouzahs Dhunpookhra
 “and Bahooara original, with dependencies
 “appertaining to talooka Athur, pergunnah
 “Bhojepore, held and possessed by me. I and
 “my heirs shall not, as long as the whole
 “amount aforesaid remain unpaid, transfer
 “them in any way.” Then there is a clause
 to this effect:—“Should the mouzahs mortgaged
 “be sold in execution of decree or for arrears
 “of revenue, the said lady shall in that case
 “be at liberty, without waiting for the ex-
 “piration of the term of payment, to institute
 “a regular suit, and to sell the movable and
 “immovable properties of me the declarant
 “and my heirs, and thereby realise the amount
 “in question.” This bond was registered on
 the 23rd June 1856.

The action is brought by Bhedi Singh and

12 other persons, who are the heirs of the Mussumat, the fourteenth Plaintiff being a person called Turmundul Dass, who had purchased a fourth share in the bond. The Defendants in the suit are, first, Ritbhunjun Singh, described in the heading of the suit as "the principal contractor of the loan," and, secondly, certain persons who are described in the same heading as "auction purchasers of the pledged property," and it may here be stated that they became such purchasers under a decree obtained upon another mortgage bond made by Ritbhunjun Singh subsequently to the bond in question, and of course subject to it. The date of the auction sale, which is sought to be impeached, is the 18th May 1865.

After the discussion which has taken place at the bar, there remain only two questions to be decided. The first is purely a question of fact which was raised in the following issue, the third issue,—“Whether or not the mortgagor has received the consideration money?” It has been contended by Mr. Arathoon that the consideration stated in the bond is not truly stated. The principal amounts of the five bonds enumerated in the bond in question are not disputed, but it is said that an amount of interest equal to the aggregate amount of the principal sums,—the principal being 8,000 rupees, and the interest 8,000 rupees also,—found its way into the bond by some fraud or error, and that in point of fact that interest was not due, but had been previously paid. Both Courts below went very fully into the evidence given on that issue, and came to the concurrent finding that the Defendant has failed to establish it. Having executed this bond the onus is upon him to show that the consideration had not passed. Both Courts have come to the

conclusion that he has failed to support that burden, and that he has shown no sufficient ground for the conclusion that that interest was not due. It is said that calculating only simple interest on the bond, the 8,000 rupees could not be made up; but the High Court make a suggestion, which their Lordships regard as a reasonable supposition, that the parties before entering into the new bond may have come to an arrangement that rests should be made in the account, and compound interest paid. In the absence of satisfactory proof of fraud or mistake, every presumption in favour of the statements contained in the bond ought to be made, considering that it was deliberately entered into, and that for many years it has been acted upon, and payments made under it. Their Lordships, therefore, see no reason to be dissatisfied with the conclusion to which the Courts below have come upon the issue of fact, and the appeal so far as that issue is concerned fails.

The other question arises upon the period of limitation which is applicable to this case. As already observed, the instrument contains two distinct things: the obligation to pay the money, which binds the maker of it only, and the mortgage of the land; and the plaint in the present suit is properly framed upon the instrument in that aspect. It seeks to charge the first Defendant, the maker of the bond, Ritbhunjun Singh personally, and it also claims to recover the amount of the principal and interest by the sale of the mouzals (naming them), which were the hypothecated property included in the mortgage. It is contended for the Appellant that the limitation contained in clause 16, section 1, of the Act 14 of 1859, is the proper limitation to apply to the case. That is a sweeping clause, which provides thus: "that to all suits in which no other limitation is hereby expressly provided, a period of six

“ years from the time the cause of action arose.” It is said that this is a suit brought to recover money lent, and the interest on that money, and that it falls within clause 16, because, although clause 10 applies to suits for money lent, it does not apply to them in the cases where the instrument shall have been registered within six months from the date, and this bond, having been so registered, is not within that section, and, not being otherwise provided for, falls within the limitation of six years in clause 16. Their Lordships, however, are clearly of opinion that neither of these clauses is applicable to this suit, which is brought, in substance, for the recovery of immovable property, or of an interest in immovable property, and falls therefore within clause 12 of the first section. The object of the suit is to obtain a sale of the land as against the Defendants grouped as Defendants No. 2 and No. 3, who had become purchasers under a subsequent mortgage bond. It is therefore, as against them, a claim founded not upon the contract to pay the money, but upon the hypothecation of the land. Their Lordships would have been disposed so to apply the Statute of Limitations if the matter had been *res integra*, but it appears from the cases to which they have been referred, by Mr. Cave that there has been a long and almost uniform current of decisions in the two provinces of Bengal and Madras, giving this construction to the Act. Their Lordships must not be supposed, in coming to this decision, to give any countenance to the argument of Mr. Arathoon that this suit would have been barred if the limitation of six years under clause 16 had been applicable to it. They think, upon the construction of this bond, there would be good reason for holding that the cause of action arose within six years before the commencement of the suit. However, it is sufficient to say that

their Lordships think the limitation applicable to the case is that under clause 12, section 1, of the Limitation Act.

In the result, their Lordships will humbly advise Her Majesty to affirm the decision of the High Court, and to dismiss this Appeal with costs.