

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Babu  
Narotam Das v. Babu Sheo Pargash Singh,  
from the Court of the Judicial Commissioner of  
Oudh ; delivered 5th February 1884.*

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Present :

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE issue raised in this case is, Can the bond be held to be a valid document and binding upon the Defendant when it was executed during the time the estate was under the operation of the Encumbered Estates Act (Act XXIV. of 1870)? It is not necessary to consider whether a talukdar, whilst his taluka is under management in pursuance of that Act, is competent to make a personal contract, inasmuch as it does not arise in the present case. The question depends upon the construction of the document which is set out at page 2 of the record, and which their Lordships consider to be a mortgage of the estate and nothing else. It contains no personal contract by the Defendant to pay out of his personal estate, but it is a mere contract to pay out of the hypothecated estate.

The contract commences by stating that he has borrowed the sum of Rs. 4,100 at a certain rate of interest. Then it goes on: "I have by  
" this instrument hypothecated the whole of my  
" property in taluka Chandipur Birhar, situate  
" in Fyzabad." There he describes it as an hypothecation. "As the [aforesaid taluka of

“ Chandipur Birhar is under management under  
“ the Encumbered Estates Act, and I have already  
“ filed in the office of the Superintendent a  
“ schedule of my debts specifying the names of  
“ my creditors, I do hereby promise and give it  
“ in writing, that I shall without any plea repay  
“ the principal with interest within the term of  
“ two years.” But the contract does not stop  
there. It goes on:—“ The mode of payment will  
“ be, that after paying up the scheduled debts, I  
“ shall first of all pay up the debt covered by  
“ this bond, including interest”—that is to say,  
that he will pay this bond after he has paid the  
scheduled debts. “ I shall thereafter appropriate  
“ the profits of the estate and attend to the  
“ liquidation of other debts. I shall not take the  
“ profits of the estate without paying up the  
“ present debt with interest; if I do take the  
“ profits, it will be for the payment of this debt.  
“ I shall until this debt is repaid abstain from  
“ contracting other debts from the bank or any-  
“ where else.” Up to this period it is evidently  
a mere hypothecation of the estate as a security  
for the money. Then he says lower down:—  
“ When my estate is released from management  
“ under the Encumbered Estates Act I will  
“ immediately first of all pay the debt due to the  
“ said banker, and will pay the other creditors  
“ afterwards.” That is merely an intention on  
the part of the borrower that this debt shall  
be a prior charge upon the estate after pay-  
ment of the scheduled debts. “ In both cases,  
“ that is, while the estate is under management  
“ and after it is released, the repayment of  
“ this debt will be the subject of my first  
“ consideration. In the event of any breach of  
“ contract taking place on my part, the said  
“ banker is at liberty to institute a suit within  
“ the time fixed in this bond and recover the  
“ money. I will not transfer or mortgage to

“ anyone the hypothecated property till the  
 “ principal and interest of this debt is paid up;  
 “ if I do so it will be illegal.” Then he goes  
 on:—“ These few lines have therefore been  
 “ written as an unconditional bond hypothecating  
 “ my property, so that it may serve as a document  
 “ and be of use when required. P.S.—I have taken  
 “ this Rs. 4,100 over and above the Rs. 3,200  
 “ borrowed by me, by hypothecation of the pro-  
 “ perty, by the mortgage deed attested on 17th  
 “ March 1873.”

Looking at the whole of this deed, their Lordships cannot place any other interpretation upon it than that it was a mere hypothecation of the taluka which was then under management.

Then with regard to section 4, clause 3, which says, “ that so long as such management continues  
 “ the talukdar and his heir shall be incompetent  
 “ to mortgage, charge, lease, or alienate their im-  
 “ moveable property or any part thereof, or to  
 “ grant valid receipts for the rents and profits  
 “ arising or accruing therefrom,” it appears to their Lordships that this deed, being a mere hypothecation of the property, falls clearly within the clause, and consequently that it was invalid. Both the Courts have held that the deed was invalid within the meaning of the Act; and their Lordships think that those decisions are right. They will therefore humbly advise her Majesty to affirm the decision of the High Court; and the Appellant must pay the costs of this Appeal.

