

*Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of Rai Sham Kishen Das and others v. Raja Run Bahadoor Singh from the High Court of Judicature at Fort William in Bengal; delivered March 6th, 1888.*

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Present :

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Sir Barnes Peacock.*]

THEIR Lordships are of opinion that the High Court was correct in the view which it took that execution could not be issued. The Plaintiff under the decree received the yearly instalments of Rs. 30,000, and according to the stipulation in the original arrangement they were to be applied in the first instance to the payment of interest, and the balance in reduction of the principal. He might have issued execution if the last instalment had not been paid, still, when it was paid, it was to be applied according to the stipulation, in the first place in discharge of the interest.

As to the opinion which the High Court expressed with reference to the payment made on the 31st August 1875, there is not sufficient on the Record to enable them to say whether that opinion was correct or not. It is merely an opinion of the High Court not having reference to the decree, and therefore the parties ought not hereafter to be bound by it. The matter will be open for consideration on any future occasion.

Their Lordships, under the circumstances, will humbly advise Her Majesty to affirm the

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decision of the High Court, and to dismiss this appeal. The Appellants must pay the costs of the appeal.