Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Hurro Nath Roy Chowdhry Bahadoor v. *Rundhir Singh and Others, from the High Court of Judicature at Fort William in Bengal; delivered Thursday, 20th November* 1890.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.
MR. SHAND (LORD SHAND).

[*Delivered by Sir Barnes Peacock.*]

THEIR Lordships are of opinion that the judgment of the High Court is correct, and that it ought to be affirmed.

The learned judges of the High Court in delivering their judgment, at page 241 of the record, say:—"The question arises, what are "the particular sums of money in respect to "which the Plaintiff is entitled to any charge "upon the estate? It is alleged, and the recitals "in the bonds are to the effect, that the "moneys were borrowed for three purposes; "first, litigation expenses; second, maintenance "of the widow and deb-sheba; and third, "Government revenue." With regard to the litigation expenses, the learned judges disallow the amount claimed, upon the ground that the Plaintiff has not proved what those litigation expenses were; that he has not properly rendered any accounts of them, and that under those circumstances he is not entitled to a Decree in respect of them. As regards the maintenance of the widow and deb-sheba they say:—"We cannot

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" say that the Plaintiff was entitled to a Decree as " against the estate for the sums of money said to " have been advanced for maintenance and deb- " sheba, except as regards the sum of Rs. 2,239, " which is admitted by the lady in her deposition to " have been received by her, and which is proved " by Srinath Dobey to have been paid for main- " tenance and deb-sheba expenses. To this " extent we think the Plaintiff is entitled to " charge the estate." As regards the payment of Government revenue the learned judges allow Rs. 12,418 : 10 : 6, which is proved in the judgment of the Court to have been paid by the Plaintiff as Government Revenue. They thus hold the Plaintiff to be entitled to Rs. 14,657 : 13 : 6, as money which had been paid by him for maintenance and deb-sheba and for Government revenue, the litigation expenses having been disallowed, and their Lordships are of opinion that the High Court rightly so held.

A question then arises whether a sum of Rs. 10,000, which has been found by the Courts below to have been received by the Plaintiff's principal man of business on account of the *ijara* rent, ought to be deducted from the sum of Rs. 14,657 : 13 : 6.

Their Lordships think that the Plaintiff ought to have seen that this sum was applied in reduction of the debt for which the estate was liable, and that the judgment of the High Court was right in deducting the whole of that sum, leaving Rs. 4,657 : 13 : 6 as the proper sum to be allowed to him. It is contended for the Plaintiff that he was not bound to see to the application of the money. The rule laid down in Hunoomanpersaud Panday's case, 6 Moore's Indian Appeals, p. 424, is this :—" Their Lordships think that if " he does so inquire, and acts honestly, the real " existence of an alleged sufficient and reasonably

" credited necessity is not a condition precedent to " the validity of his charge, and they do not " think under such circumstances he is bound to " see to the application of the money." But then their Lordships proceed further and give the reason why he is not bound to see to the application of the money. They say :—" The purposes for " which a loan is wanted are often future, as " respects the actual application, and a lender can " rarely have, unless he enters on the management, " the means of controlling and rightly directing " the actual application." In this case the Plaintiff did have the control and actual application of the money, and having that control and application he was bound to see that the money was properly applied.

There was also a further question relating to interest. The learned judges of the High Court say :—" The bonds stipulate payment of interest " at the rate of 18 per cent. per annum. We do " not think that the Plaintiff is entitled to this " high rate of interest as a charge upon the estate. " But we are of opinion that the ends of justice " would be quite met by allowing him interest at " the rate of 12 per cent. per annum,which is to be " calculated upon the several sums of money as " they were advanced from time to time up to the " date of the Decree," and they allow the Plaintiff a total sum of Rs. 6,194, the sum which they give for interest being the difference between this sum and the above-mentioned sum of Rs. 4,657 : 13 : 6. It has been said that there is a miscalculation of the interest at the rate of 12 per cent. If there is the Plaintiff ought to have applied to the High Court to set the figures right, and no doubt they would have been set right. No such application having been made the Decree ought not to be reversed upon this ground.

Then comes the question, was 12 per cent. a sufficient rate of interest? The widow was borrowing in a case of necessity. It was for the Plaintiff to see whether there was really and fairly a ground of necessity. Was there a necessity to borrow at the rate of 18 per cent.? That is a question to which he ought to have applied his mind; and if it were unreasonable to suppose that the widow could not borrow the money at a less amount that 18 per cent. he ought not to have charged her that rate.

Their Lordships think therefore that the High Court were right in not allowing interest as against the estate at a higher rate than 12 per cent.

For these reasons their Lordships think that the Decree of the High Court ought to be affirmed; and they will humbly advise Her Majesty to that effect. The Appellant must pay the costs of this Appeal.