Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Tika Ram v. *The Deputy-Commissioner of Bara Banki, from the Court of the Judicial Commissioner of Oudh: delivered* 11*th March* 1899.

Present;

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

This is an Appeal against a decree of the Court of the Judicial Commissioner of Oudh varying an order of the District Judge of Fyzabad. The suit in which the decree was pronounced was brought to enforce a claim under four deeds of mortgage three of which were executed by the late Raja Mehpal Singh talukdar of Surajpur and one by the Rani his widow after his death. The Appellant Tika Ram who represents the mortgagee was Plaintiff. The Defendant in the suit was the present Respondent the Deputy Commissioner of Bara Banki who is now under the Court of Wards manager of the Surajpur estate on behalf of the minor son of the late Raja.

The only question argued at the Bar which in their Lordships' opinion it was competent for the Appellant to raise was whether the circumstances under which the fourth mortgage was executed by the Rani were such as to make it binding on the minor's estate.

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The three mortgages executed by the Raja were :—

(1.) A mortgage of the village of Baghora to secure Rs. 10,000 dated 15th January 1880.

(2.) A mortgage of the village of Mau to secure Rs. 6,000 dated 30th November 1880.

(3.) A further charge by way of mortgage on the village of Mau to secure Rs. 8,000 dated 30th May 1882.

The rate of interest specified in each of these mortgages was 15 per cent. per annum but with each mortgage the borrower gave the lender a Rukka or written promise to pay 6 per cent. more bringing the rate of interest in respect of each mortgage up to 21 per cent. per annum. These Rukkas were not registered and it seems to have been the intention of the parties that they should be kept off the Register.

On the 8th of October 1882 the Raja died. By his will he declared that the Rani should have full powers but that during the life-time of his son the minor on whose behalf the Respondent is manager the Rani should not have power to transfer without any legal necessity any portion of his property; but that to pay off the Government Revenue and to liquidate other debts payable by him the Rani should have power to mortgage the property. It was held by the Court of the Judicial Commissioner and as their Lordships think rightly held that this will "conferred on the "Rani no greater power of alienating her minor "son's estate than she had under Hindu law as "its manager on her minor son's behalf."

The circumstances under which the fourth mortgage was executed are not in dispute. In March 1885 two years and a half after the Raja's death and before the Court of Wards assumed

the management of the estate one Beni Ram an accountant acting on behalf of Tika Ram settled up accounts with the Karinda of the Rani. The balance due for interest calculated at 21 per cent. per annum was found to be Rs. 9,228. 14. 3. It was arranged that a mortgage should be given for Rs. 8,000 and that the balance should be paid in cash. The arrangement was carried out by the payment of Rs. 1228. 14. 3 in cash and the execution of the fourth mortgage on the 18th of March 1885.

Their Lordships agree with the Judicial Commissioner's Court in thinking that the mortgage cannot stand. It seems to be open to every possible objection. It turned interest into principal without any apparent reason. No enquiry was made into the means and circumstances of the widow. The widow who was a pardanashin lady stated in her deposition taken by commission that the account had never been put before her or settled by her and that she did not know the mortgage was on account of interest—a statement not improbable in itself and certainly not contradicted by any evidence while there is evidence to the effect that on the 18th of March 1885 there was a cash balance to the credit of the estate of Rs. 14,000.

Mr. Arathoon who argued the case strenuously on behalf of his client insisted that their Lordships ought to infer that extreme pressure was being put on the Rani that the estate was in immediate peril of being sold up unless the Rani submitted to the mortgagee's demands while by submission she gained the advantage of extension of time and reduction of the rate of interest from 21 per cent. per annum to 15 per cent. in future. It is enough to say that there is no evidence whatever in support of any one of these suggestions. Neither in the fourth mortgage deed nor in any other document nor even in the

oral evidence is there any trace of any agreement or any understanding that there should be any time given or any reduction of interest allowed. It was as much open to the mortgagee immediately after the execution of the fourth mortgage as it was before to enforce his rights without forbearance or allowance of any kind.

One proposition was advanced in the course of the argument which perhaps ought to be noticed. It was urged that the Rukkas though not registered fettered the equity of redemption. The learned District Judge was of that opinion clearly. But their Lordships have a difficulty in understanding how an unregistered instrument which the statute declares is not to affect the mortgaged property can fetter the equity of redemption in that property. It seems to be a contradiction in terms.

There Lordships were asked to give the Appellant a decree against the estate of the deceased Raja based on his personal liability under the Rukkas. The learned Commissioners expressed their opinion on the matter as if it were properly before them. But the truth is that this question was not raised in the plaint or referred to in the pleadings or issues. In their Lordships' opinion it was not competent for the Court in this suit to deal with it.

The result is that the Appeal fails and their Lordships will humbly advise Her Majesty that it ought to be dismissed.

The Appellant will pay the costs of the Appeal.