which the Sessions Judge has drawn from the evidence and embodied in these findings cannot reasonably be drawn from it. They think that the evidence reasonably interpreted affords no corroboration at all of Aiyasami's story. The so-called circumstantial evidence in their opinion in no way strengthens the direct evidence, which as already stated, cannot be relied upon, and for these with the other reasons already mentioned, they think that the conviction of the accused should not be allowed to stand. And they have humbly advised His Majesty accordingly.

Appeal allowed.

Solicitors for the appellant: *T. L. Wilson & Co.*

Solicitor for the Crown: *The Solicitor, India Office.*

J.V.W.

APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., Chief Justice, and Mr. Justice Sankaran Nair.

U. KESAVULU NAIDU (PLAINTIFF), APPELLANT,

v.

ARITHULAI AMMAL AND SIX OTHERS (DEFENDANTS 1 AND 3 TO 8), RESPONDENTS.*

1912. November 13 and 14.

Indian Contract Act (IX of 1872), sec. 16, as amended by Act VI of 1899—Interest, grounds for reduction of—Undue influence.

It is not open to a court to reduce the rate of interest in a promissory note unless the stipulation as to interest was obtained by the exercise of undue influence as defined in section 16, Indian Contract Act (IX of 1872).

Bakishan Das v. *Madan Lal* (1907) I.L.R., 29 All., 303, dissented from.

Dhanipal Das v. *Raja Maneshar Bakhsh Singh* (1906) 33 I.A., 118, followed.

Per THE CHIEF JUSTICE.—It was not open to the District Judge on general equitable grounds to interfere with the contract between the parties unless he was satisfied that the contract was brought about by the exercise of undue influence.

Per SANKARAN NAIR, J.—Excessive interest in itself may not be a ground for relief but it may be evidence of the fact that the debtor must have been in a very helpless condition to accept the terms imposed by the creditors.

Compare the decision in *Muthukrishna Iyer* v. *Sankaralingam Pillai* (1913) I.L.R., 36 Mad., 229.

APPEAL against the decree of V. VENUGOPAL CHETTI, the District Judge of Chingleput in Original Suit No. 8 of 1909.

This was a suit by a transferree to recover Rs. 4,200 principal and interest due on a promissory note (Exhibit A)

* Appeal No. 90 of 1910.

KESAVULU NAIDU v. ARTHULAI AMMAL.

executed on 12th September 1906 by defendants 1 to 5 in favour of one Parthasarathy Naidu (plaintiff's first witness) for a sum of Rs. 1,500 at the rate of 5 per cent. per mensem for the purpose of preserving Zamin Mercandai their common property from sale in execution of the decree in Original Suit No. 119 of 1903 on the file of the court of the District Munsif of Chingleput. It was stated in the plaint that the defendants received the plaint amount through their authorized agents and executed an agreement (Exhibit C) on 14th March 1906. Stating the circumstances under which they were driven to execute the suit promissory note at this rate of interest plaintiff's first witness transferred the promissory note to plaintiff on 2nd October 1907 for full consideration (Exhibit A).

Defendants 3 and 4 admitted the execution of the promissory note and the passing of the consideration. Fifth defendant was *ex parte*.

Second defendant died and her minor sons, defendants 6 to 8, were brought on record and their father appointed guardian.

First defendant and defendants 6 to 8 contended *inter alia* that the suit promissory note was not genuine and executed by defendants 1 and 2; that defendants 4 and 5 were the daughters of Seethapathy (plaintiff's fifth witness) and fifth defendant is married to third defendant's son; that defendants 1 and 2 got the estate of their father after the death of their brother by a will (Exhibit I); that defendants 1 and 2 asked Seethapathy to pay Rs. 1,158-0-3 towards the decree in Original Suit No. 119 of 1903, for the sums he owed to the estate when he was managing it during the minority of their brother; that he consented and paid the amount; that he obtained the signature of the second defendant on a piece of blank paper stating that he wanted a receipt as a voucher for the amount he paid till the settlement of the estate accounts; similarly obtained first defendant's signature on a label and the attestation of her husband representing that second defendant signed it; that on this blank piece of a paper he got the promissory note executed; that the rate of interest as provided in the promissory note was not enforceable and the bargain was an unconscionable one; that the agreement was a bogus one; that he obtained the signature of the first defendant on a blank stamp paper and got the agreement executed on it with a view to create a right in the estate property for his daughters, defendants 4 and 5.

The following issues were framed :—

I. Is the suit promissory note genuine ?

II. Is the rate of interest provided in the suit promissory note enforceable ?

On a consideration of the oral evidence and the probabilities the District Judge found that the suit promissory note was genuine.

On the second issue the District Judge found as follows :—

"The whole dispute in the suit has clearly arisen on account of the exorbitant rate of interest of 60 per cent. per annum. Is the Court competent to cut down the rate ? The rate provided for in the suit promissory note is less than that in Exhibit H. There is evidence to show that plaintiff's fifth witness and defendants' first witness were not successful in their attempts at raising a loan in various places. The need for the loan was to avert the sale of one of the Zamin villages. It is contended that on the security of two villages which were worth Rs. 8,000 at the time it should have been possible to raise a loan at a lower rate of interest. But there is the fact as shown in Exhibit H that in November 1905 it was not possible to get a loan at a low rate of interest. It is not shown that there are any circumstances between the dates of Exhibit H and Exhibit A to indicate that a loan could have been raised on more favourable terms. But there are other circumstances also requiring consideration. Plaintiff's fifth witness admits that subsequent to the execution of the promissory note he made no attempt to get the decree debt discharged or to get the suit debt discharged. All that he did was to get the promissory note transferred to the plaintiff. Even subsequent to transfer he says he took no steps as defendants 1 and 2 are at variance with him he was not bound to take any steps when disputes arose between the parties but in the peculiar circumstances of the case the fact is one of the elements to be considered. Even according to the plaintiff's evidence the suit debt was agreed to be discharged in six months. But the suit was instituted three years afterwards. Plaintiff's fifth witness admits that if the amount was not paid up the estate would have to be proceeded against. Taking all the circumstances into consideration, I am of opinion that the rate provided for is exorbitant and is in the nature of an unconscionable bargain. Defendants 1 and 2 were at the time under the guidance of plaintiff's fifth witness and defendants'

KESAVULU NAIDU v. ARITHULAI AMMAL.

first witness. There is no evidence that the husband of the first defendant took any steps in raising the loan. Defendants 4 and 5 are the daughters of plaintiff's fifth witness and the 3rd plaintiff's fifth witness and the third defendant is related to the fifth by marriage also. Under these circumstances I reduce the rate of interest up to the date of plaint to 24 per cent. per annum."

In the result he gave a decree to the plaintiff against all the defendants with costs for the amount of the promissory note with interest at 24 per cent. from the date of the promissory note to the date of plaint and subsequent interest at 6 per cent. from the date of plaint up to date of realization.

Defendants appealed to the High Court.

M. Narayanaswami Ayyar for the appellant.

T. Ramachandra Rao for the second respondent.

S. V. Padmanabha Ayyangar for respondents Nos. 5 to 7.

WHITE, C.J. THE CHIEF JUSTICE.—This is a suit brought by the endorsee of a promissory note of Rs. 1,500 which provided for the payment of interest at the rate of 60 per cent. per annum. The makers of the note were five ladies. Two issues were raised; is the note genuine? is the rate of interest provided in the note enforceable? The judge found that the note was genuine but that the rate of interest was not enforceable and in lieu of the interest provided for in the note he gave the plaintiff interest at the rate of 24 per cent. per annum. The plaintiff appeals against this. There is no cross-appeal as regards the genuineness of the note. The contesting defendants are defendants Nos. 1, 6, 7 and 8. They plead that the note was fraudulent and that the rate of interest was high and unconscionable. There is no plea that the note was procured by the exercise of undue influence on the part of anybody. There is no issue as to this and there is no finding of the District Judge as to this. Consequently, I suppose it must be taken that the District Judge, although he was not prepared to find or although at any rate he did not consider it necessary to find that the execution of the note was procured by undue influence, was of opinion that he could give relief to the defendants by way of reducing the rate of interest provided for in the note to what he considered an equitable rate in all the circumstances of the case. Now it seems to me and I speak only for myself that it was not open to the District Judge on general equitable grounds to interfere with

the contract between the parties unless he was satisfied that the contract was brought about by the exercise of undue influence. As the Judge has given the plaintiff a decree on the note it must of course be taken that the Judge did not consider that it was vitiated by fraud. In support of the contention that the learned Judge can, on general equitable grounds, interfere with the contract rate of interest, our attention has been called to several authorities. *Poma Dongra* v. *William Gillespie*(1), was cited to us. There the Court granted equitable relief on the ground that the agreement appeared to be of an unconscionable character. It would seem in that case the learned Judge (DEWAR, J.) was of opinion that the agreement was brought about by undue influence. He says "I have no doubt in my mind that, when the defendant executed the two promissory notes in this suit undertaking to repay the loans with interest at 75 and 60 per cent. per annum, the plaintiffs were in a position to dominate his will." That observation is obviously made with reference to section 16 of the Contract Act. Then we have the Allahabad decision in *Balkishan Das* v. *Madan Lal*(2). In that case the learned Judges confirmed the judgment of the District Judge reducing the rate of interest, although in that case there was the finding by the Court below which was accepted in the High Court that it was not a case in which it could be said that undue influence was brought to bear. All I can say with regard to that case is, speaking with all respect, that it seems to me to be impossible to reconcile it with the decision of the Privy Council in *Dhanipal Das* v. *Raja Maneshar Bakhsh Singh*(3), a case, I think I am right in saying which was not brought to the notice of the learned Judges of the Allahabad High Court. In that case the Subordinate Judge held that it was not one of fraud or undue influence but of inequitable dealing and he decided to interfere in the enforcement of the hard terms of the contract and accordingly allowed simple interest at 18 per cent. but not compound interest. In dealing with this judgment Lord DAVEY in delivering the judgment of the Privy Council said "The Subordinate Judge was wrong in deciding the case in accordance with what he supposed to be English equitable doctrine. He

(1) (1907) I.L.R., 31 Bom., 348 at p. 352. (2) (1907) I.L.R., 29 All., 303.
(3) (1906) 33 I.A., 118 at p. 127.

KESAVELU NAIDU v. ARUMUGAM AMMÁL.

WHITE, C.J.

ought to have considered the terms of the amended section 16 only. He also mistook the English Law. Apart from a recent statute an English Court of Equity could not give relief from a transaction or contract merely on the ground that it was a hard bargain, except perhaps where the extortion is so great as to be of itself evidence of fraud, which is not this case. In other cases there must be some other equity arising from the position of the parties or the particular circumstances of the case. But, although he was wrong in the reasons for his judgment, the Subordinate Judge may be right in his findings of fact." This, so far as I know, is the latest decision of the Privy Council with regard to this question. The principle of this decision was applied by this Court in *Ranee Annapurni Nachiar* v. *Swaminatha Chettiar*(1). There are no doubt earlier cases of the Privy Council in which equitable relief has been granted and the rate of interest has been cut down without any finding express or implied that the agreement was brought about by undue influence. I may refer to the cases of *Srimati Kamini Soondari Chowdhrani* v. *Kali Prosunno Ghose*(2) and *Rajah Mokham Singh* v. *Rajah Rup Singh*(3). Both these cases were decided after the passing of the Indian Contract Act, 1872, and before the amendment of section 16 of the Act of 1899. The object of the amendment was to extend the scope of the section and does not affect the question we are now considering. With regard to the latter case it may be observed that the language of their Lordships is somewhat guarded. They conclude their judgment by saying "a decision thus arrived at ought not to be set aside on appeal unless it clearly appears to be wrong." It may be that the last decision in *Dhanipal Das* v. *Rajah Maneshar Bakhsh Singh*(4), is difficult to reconcile with the two earlier decisions. It seems to me, we ought to apply the principle as laid down in the latest case; and applying that principle I am of opinion that it was not open to the District Judge to reduce the rate of interest unless he was of opinion (and in the absence of any issue or finding I do not think we can assume he was of opinion), that the stipulation as to interest was procured by the exercise of undue influence as defined

(1) (1911) I.L.R., 34 Mad., 7.
(2) (1885) 12 I.A., 215.
(3) (1893) 20 I.A., 127.
(4) (1906) 33 I.A., 118.

by section 16. We have a state of things in which the District Judge has found we must take it, against the plea of fraud; because if the plea of fraud was made out, he of course would not have given the plaintiff a decree for the amount of the principal with interest at the rate which he thought was equitable. We must take it that he finds against the plea of fraud, that he finds that the document was a genuine document in the sense that it was executed by the parties by whom it purports to have been executed and that he does not find that it was brought about by undue influence. In these circumstances, I think that his judgment that the rate of interest ought to be cut down cannot be supported. Then I assume for the purposes of this appeal and only for the purposes of this appeal, that it is open to us to deal with this case as if there had been the plea of undue influence raised and to consider whether, on the evidence, the plea is established. On the evidence it seems to me clear that that plea is not established. The transaction was carried out by the fifth witness for the plaintiff, who is the father of the defendants Nos. 4 and 5 and the husband of the second defendant and who acted under a power of attorney which was given to him by his own daughters and by the other defendants in the case—the executants of the note. The difficulty, about the case is, to say who is the party who exercised the domination and who is the party whose will was dominated. The fifth witness for the plaintiff, the agent, was acting under a power of attorney and there is no evidence to support the suggestion that his will was dominated in that that he entered into a transaction which he knew was inequitable or which he knew was contrary to the interests of his principals, the parties who gave him the power of attorney. The ladies were very anxious to raise the money for the purposes of saving the estate from sale but there is no evidence from which we can draw the inference that their agent, brought pressure to bear upon the ladies or that they were in a position of helplessness. Then can it be suggested that his will was dominated? There is no evidence to show that he entered into an agreement by which the original payee, who is the first witness for the plaintiff, agreed to advance the amount of Rs. 1,500. It is not found that this Rs. 1,500 was not advanced. The original payee in turn endorsed the note to the plaintiff. It is not found that the plaintiff did not advance Rs. 1,500 to the original payee. I can find no evidence

KESAVULU NAIDU v. ARITHULAI AMMAL.

WHITE, C.J.

in the case, at any rate our attention has not been called to any, which would in my opinion, warrant us in holding that the wills of the executants of the note were dominated by anybody or that the will of their agent was dominated by anybody so as to bring in the provisions of section 16 of the Contract Act. No doubt the rate of interest is high and it may be that a very high rate of interest is not only evidence of the unconscionable nature of a bargain but is also evidence that the will of the party who consented to pay the exorbitant rate of interest was dominated. Here we have the rate of interest at 60 per cent. In the circumstances of this case it seems impossible to hold on that alone that the contract was brought about by undue influence and in my opinion there is really no other evidence in the case which would warrant us in coming to that conclusion. There is a further question that I need not discuss, *i.e.*, as to the rights of the plaintiff as the holder of the note by indorsement from the original payee. Then there is another defence put forward; so far as I understood it, it was that the payee was a mere name lender for the fifth witness for the plaintiff who held the power of attorney and that the benefit of the transaction was to be enjoyed by this fifth witness. If there was any evidence at all that there was anything like collusion or conspiracy as between the payee and the fifth witness for the plaintiff that they would be sharers of the spoils, then of course we should have to consider whether we could allow the transaction to stand. But so far as I can see there is no evidence. This defence seems to me merely a suggestion which is quite unsupported by the evidence. For these reasons I think we must allow the appeal and give the plaintiff a decree for the amount of the principal and interest at the rate provided for in the note. We modify the decree of the lower Court by substituting the rate of interest as provided for in the promissory note for the interest at 24 per cent. Interest at 6 per cent. after the date of the plaint will be allowed. The plaintiff will have costs here and in the lower Court to be paid by the first defendant and the second defendant's legal representatives.

SANKARAN NAIR, J.

SANKARAN NAIR, J.—Under section 16 of the Indian Contract Act IX of 1872 before it was amended a contract which was entered into by one party under undue influence as defined therein was voidable by him. The following is the definition of

undue influence. "Undue influence is said to be employed in the following cases:—

(1) When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which but for such confidence or authority, he could not have obtained:

(2) When a person, whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that, to which, but for such treatment he would not have consented, although such treatment may not amount to coercion." *Srimati Kamini Soondari Chowdhrani* v. *Kali Prosunno Ghose*(1) was decided while this provision of law was in force. That was a suit for the recovery of money due under a mortgage bond. The plaintiff was the *mukhtear* of the defendant who was a *purdanashin* lady; and the question was whether with regard to the rate of interest it was an unconscionable bargain in which undue advantage was taken of the lady by her *mukhtear*, the plaintiff. Their Lordships of the Privy Council accepted the finding of the lower Court against fraud and undue influence and they were of opinion that the whole transaction could not be therefore set aside. But assuming the validity of the mortgage, the question was argued before them whether the agreement about the rate of interest was not an unconscionable bargain such as a Court of Equity could relieve against. They followed the English Law as laid down by the MASTER OF THE ROLLS in *Beynon* v. *Cook*(2), and quoted the following passage with approval "The point to be considered is, was this a hard bargain? The doctrine has nothing to do with fraud. . . . It has been laid down in case after case that the Court, wherever there is a dealing of this kind, looks at the reasonableness of the bargain, and if it is what is called a hard bargain sets it aside. . . . It was obviously a very hard bargain indeed, and one which cannot be treated as being within the rule of reasonableness which has been laid down by so many judges." Following this judgment they held that the compound interest charged was exorbitant and unconscionable and as the purchaser took full notice of these circumstances it should not be allowed and

(1) (1885) 12 I.A., 215. (2) (1875) L.R., 10 Ch., 389 at p. 391.

KESAVULU NAIDU v. ARTHUMAL AMMAL. — SANKARAN NAIR, J.

accordingly reduced it. The decision establishes that though the agreement is valid so far as the Contract Act is concerned, though there is neither fraud nor undue influence, it will not be enforced if such as will be relieved against in a Court of Equity. Their Lordships say "The finding of the lower Court against fraud and undue influence must now be accepted; a contrary finding would have avoided the whole transaction." But assuming the validity of the mortgage, a question arises whether, under the circumstances, the rate of interest exacted did not amount to a hard or unconscionable bargain such as a Court of Equity will give relief against" and accordingly reduced the interest as pointed out above. Similarly in another case where the plaintiffs had, in the belief that the defendant's claim to an estate was well founded, advanced the sums necessary to enable him to prosecute the successful appeal to the Privy Council it was held that the reward stipulated for was in the circumstances, excessive and unconscionable. The Judicial Committee of the Privy Council held that it was so and they accordingly set aside the agreement and awarded the plaintiff reasonable damages. See *Rajah Mokham Singh* v. *Rajah Rup Singh*(1). It will be observed that relief was awarded to the plaintiffs in these cases not on the ground that they were procured by undue influence as defined by section 16 of the Indian Contract Act but on the broad grounds on which relief was awarded by the English Courts of Equity. In *Dhanipal Das* v. *Rajah Maneshar Bakhsh Singh*(2), Lord DAVEY is however reported to have said "The Subordinate Judge was wrong in deciding the case in accordance with what he supposed to be English equitable doctrine. He ought to have considered the terms of the amended s. 16 only." This would be in direct conflict with the judgment in *Srimati Kamini Soondari Chowdhrani* v. *Kali Prosunno Ghose*(3) already cited unless we are to assume that amending the Act the legislature intended to embody in section 16 the rules enforced in this respect by the English Courts of Equity and among them the rule that a transaction may be so unconscionable and the extortion so great as to be evidence of undue influence. I am of opinion that the amendment was made for that purpose and that the substituted

(1) (1893) 20 I.A., 127. (2) (1906) 33 I.A., 118 at p. 127.
(3) (1885) 12 I.A., 215.

definition of undue influence includes within its scope cases which did not fall within the section as it originally stood. According to this section there are two elements necessary. One of the parties to the contract must be in a position to dominate the will of the other and he must have used that position to have obtained unfair advantage over the other. Now excessive interest in itself may not be a ground for relief but it may be evidence of the fact that the debtor must have been in a very helpless condition to accept the terms imposed by the creditor. The exorbitant nature of the interest itself may be evidence of that. It may also be evidence that he must have used it to obtain unfair advantage over the other if the position of the parties is such that we may fairly presume that otherwise the debtor would not have accepted those terms. In the present case the contract rate of interest is 60 per cent. The debtors were women who were not able to enter into the transaction themselves. They had applied for loans in other quarters and they had failed. The properties were going to be sold. If, therefore, these facts had stood alone it might be fairly presumed that unless the defendants were in a distressed condition and utterly helpless in the matter and the plaintiff had not taken advantage of this position they would not have cared to pay this interest. In this case, however, it appears that the loan was negotiated by the plaintiff's fifth witness, Sitapathi Naidu, who had a power of attorney from all these defendants. It is impossible to hold that he was in any condition of helplessness and that his mind was in any way dominated by that of the creditor. It was suggested in argument before us that the creditor, the payee, was only the benami holder but the evidence does not support this suggestion. It was also argued that he was in some way interested in the loan. That also has not been established whereas we have the facts admitted that some of the debtors in this case are his own daughters and that the promissory note was attested by the husband of another female debtor. I am, therefore, clearly of opinion that one of the conditions necessary for the granting of relief does not exist in this case. Though as I have pointed out above the rate of interest provided in the promissory note in itself might, in the circumstances, show that the transaction was unconscionable and that the plaintiff used his position to dominate the will of the defendants, in this case such presumption is rebutted. I am, therefore,

KESAVULU NAIDU. v. ARITHULAI AMMAL.

of opinion that the defendants are not entitled to any reduction of interest and I agree in the decree proposed by his Lordship THE CHIEF JUSTICE.

SANKARAN NAIR, J.

APPELLATE CIVIL—FULL BENCH.

Before Sir Charles Arnold White, Chief Justice, Mr. Justice Sankaran Nair and Mr. Justice Sadasiva Ayyar.

1912. October 8, November 11 and December 18.

M. ANNAPURNAMMA [LEGAL REPRESENTATIVE OF M. CHELAMARAZU (DECEASED), FIRST DEFENDANT], APPELLANT,

v.

U. AKKAYYA AND TWO OTHERS (FIRST AND SECOND PLAINTIFFS AND SECOND DEFENDANT), RESPONDENTS.*

Negotiable Instrument in favour of several—Discharge by one of several payees, validity of.

Held by the Full Bench (THE CHIEF JUSTICE dissenting) that one of several payees of a Negotiable Instrument can give a valid discharge of the entire debt without the concurrence of the other payees.

APPEAL against the decree of T. T. RANGACHARIAR, the District Judge of Guntur, in Original Suit No. 42 of 1908.

The facts are given in the following opinion of SANKARAN NAIR, J.

M. O. Parthasarathi Ayyangar and *V. Rumesam* for the appellant.

T. Prakasam for respondents Nos. 1 and 2.

The third respondent was unrepresented.

This appeal coming on for hearing the Court (BENSON and SANKARAN NAIR, JJ.) made the following

BENSON AND SANKARAN NAIR, JJ.

ORDER OF REFERENCE TO A FULL BENCH.—The promissory note, Exhibit (B), was executed by the first defendant in favour of the two plaintiffs described therein as minors and the second defendant who was not a minor. The suit was brought by the two plaintiffs, one of whom, the second plaintiff, is even now a minor. The question for decision is whether the suit is barred by limitation. It is contended on behalf of the first defendant that the second defendant was entitled to receive the amount due under the promissory note and give a full discharge of the entire debt without the concurrence of the two plaintiffs and

* Appeal No. 218 of 1909.