APPELLATE CIVIL.

Before Mr. Justice Mitter and Mr. Justice Norris.

1885 *July* 1.

MILLER, OFFICIAL ASSIGNEE (PLAINTIFF) *v.* RUNGA NATH MOULICK AND OTHERS (DEFENDANTS.)*

Hindu Law—Joint Family—Manager, Power of, to mortgage joint family property—Limitation—Personal liability of mortgagor—Mortgage—Limitation Act, XV of 1877 Sch. II, Art. 132.

An alienation made by a managing member of a joint Hindu family is not binding upon his adult co-sharers unless it is shewn that it was made with their consent, either express or implied. In cases of implied consent it is not necessary to prove its existence with reference to a particular instance of alienation, but a general consent may be deducible in cases of urgent necessity, from the very fact of the manager being entrusted with the management of the family estate by the other members of the family; and the latter in entrusting the management of the family affairs to the manager must be presumed to have delegated to him the power of pledging the family credit or estate when it is impossible or extremely inconvenient for the purpose of an efficient management of the estate to consult them and obtain their consent before pledging such credit or estate.

By a mortgage bond, dated the 28th Magh 1281 B. S. (9th February 1875), it was provided that if the mortgagors should fail to pay the money secured thereby according to the terms thereof, the mortgagees should immediately institute a suit and realize the amount due by sale of the mortgaged property, and that if the proceeds of such sale should not be sufficient to liquidate the debt, the mortgagees should realize the balance from the persons and other properties of the mortgagors. It was further agreed that the principal and interest secured by the bond should be repaid in the month of Magh 1282 (January-February 1876.)

In a suit instituted on the 9th October 1882 upon the mortgage to recover the amount due by the sale of the mortgaged property and the balance, if any, from the persons of the mortgagors—

Held, that the bond in question provided for two remedies in one suit, and did not contemplate a second suit being instituted to recover the balance from the persons of the mortgagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full, and consequently that the cause of action against the persons of the mortgagors accrued upon the date on which the mortgage money became due, and as the suit was instituted more than six years after that date, the plaintiff's

*Appeal from Original Decree No. 102 of 1884, against the decree of Baboo Ram Gopal Chaki, Rai Bahadur, Officiating Subordinate Judge of Moorshedabad, dated the 5th February 1884.

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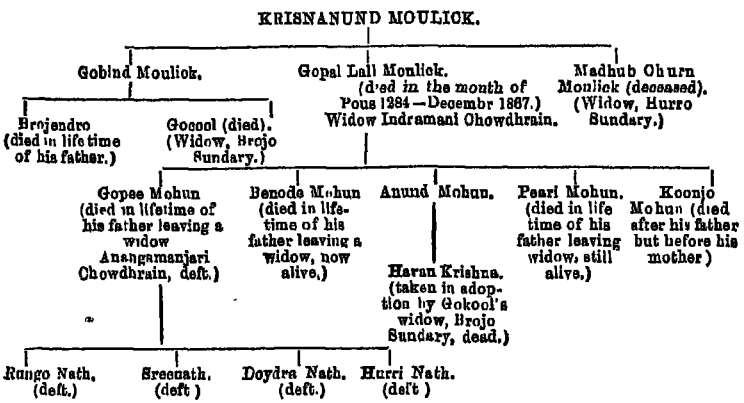
claim was barred by limitation, so far as the personal liability of the mortgagors was concerned.

Held, also, that Art. 132, Sch. II of the Limitation Act (XV of 1877) only refers to suits to enforce payment of money charged upon immoveable property *by the sale of such property*.

THIS was a suit instituted on the 9th October, 1882, by the Official Assignee of the Court for the relief of insolvent debtors at Calcutta, as assignee of the estate and effects of one Kissen Chand Gullicha who, by an order of the said Court, dated the 22nd March 1880, was adjudged to have committed an act of insolvency, and whose estate and effects were, by an order of the same date, vested in the plaintiff as such assignee.

The suit was brought on a mortgage bond, dated the 28th Magh 1281 B.S. (9th February 1875) executed by Indramani, the widow of one Gopal Lall Moulick and Runga Nath Moulick, Srcenath Moulick and Huronath Moulick, sons of Gopee Mohun Moulick and grandsons of the said Gopal Lall Moulick in favor of the said Kissen Chand Gullicha.

The following genealogical table will show the various members of the family of Gopal Lall Moulick.



The bond in question contained the following statements: "We Indramani Chowdhrain, widow of the late Gopal Lall Moulick, Runga Nath Moulick, Sreenath Moulick and Hurri Nath Moulick, sons of the late Gopee Mohun Moulick of Durlabpore, division Karimpore, zillah Nuddea, execute this bond to the effect that the zemindari mentioned below being left by my, Indramoni's, husband, and we Runga Nath, Sreenath and Hurri Nath being

future heirs to the said property, we all conjointly executed a *karbarnama* in your favour on the 6th Bhadra 1279, to the effect that any one of us should take a loan of up to Rs. 13,000 gradually by separate *hatchittas* from the tevil of your sudder *kuti* (principal firm) at Azimgunge in order to pay off the debts contracted by us to the firm of Komdari Mal Dooli Chand, agreeing to pay an interest at the rate of 1½ per cent. per mensem on mortgage of the same zemindari. According to the said *karbarnama*, we borrowed Rs. 5,500, I Runga Nath Moulick having entered it in the *hatchitta* on the 10th Bhadra of that year. All that money having been expended in carrying on law suits, and in other matters, and thinking that the remaining portion of the money mentioned in the *karbarnama* would not suffice to pay off entirely the debt to the firm of the said Baboo, the balance of the money was not taken, and therefore we have not as yet been able to pay off that. Now a suit having been instituted for the said debt, a decree was obtained against us, and in execution of the decree in No. 243 of 1874, it has been asked to attach and sell the said zemindaries, and the ensuing 19th February has been fixed as the date for sale. Accordingly we asked you for a loan again in order to save the estate, notwithstanding the above debt due to you, and you consented to give a loan again if we would execute a bond for the money now taken, together with that already due to you, and we agreed to it. The money taken by me Runga Nath by *hatchitta*, according to the purport of the *karbarnama*, is found on calculation to amount to Rs. 8,325 principal and interest, up to date due to you by us. The said sum of Rs. 8,325 and Rs. 11,675 taken to-day as per schedule below through your agent, Baboo Meher Chand Mahalat, in order to satisfy the said decree and defray our expenses, by me Indramani, through my aforesaid three grandsons, and by us, Runga Nath, Sreenath and Hurri Nath, in all Rs. 20,000, being considered as principal, and admitted as due by us, we execute this bond and stipulate that the said sum of Rs. 20,000 shall carry interest at the rate of 1½ per cent. per mensem, up to date of realization. As to payment, we shall pay (worm eaten) the whole amount, principal and interest in next Magh 1282, and take back this bond.

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"Besides, if we fail to pay the money according to the terms aforesaid, or, if the property thus mortgaged be put up to sale within the stipulated period for any liability, arrears of Government revenue, &c., you shall immediately institute a suit, and realize the principal amount with interest up to date of realization from the mortgaged property, or the value thereof, and if that falls short, from our person, and our other properties, real and personal, and we will not be able to advance any objection on the ground of the term not having expired, and such objection if advanced shall be rejected."

As security for the due payment of the loan, taken under the bond, the following properties were hypothecated :—

1. Five annas share of mouzah Shibpore, including Modafut, with all its appurtenances, Mehal No. 770, recorded in the Rent Roll of the Collectorate of zillah Moorshedabad, sub-registry Dhanian Samshergunge, bearing a sudder *jumma* of Rs. 181-11-9, recorded in the names of our predecessor, the late Gopal Lall Moulick and others.

2. Five annas share of Mehal No. 125 recorded in the Rent Roll of the Collectorate of zillah Maldah, comprising mouzahs Raipore, Kamchur, Putra Alumpore, Sukdebpore and Nijgram Ghottapara, in taruf Notibpore, sub-registry Maldah, dihi Kaliachuk, bearing a sudder *jumma* of Rs. 1,036-10-8, recorded in the names of our predecessor the late Gopal Lall Moulick and others.

3. Five annas share of Mehal No. 93 in the Rent Roll of the Collectorate of zillah Rajshaye, comprising mouzah Tikhri, including Modafut sub-registry, zillah Rajshahye, division Boulia, bearing a sudder *jumma* of Rs. 79, recorded in the names of our predecessor the late Hara Sundary Dasi and others."

The principal relief asked for in the plaint was—

(1.) That the defendants might be ordered to pay to the plaintiff the money due under the bond, and that in default the mortgaged properties might be sold by and under the direction of the Court, and the proceeds of sale applied towards payment of the amount due to the plaintiff.

(2.) That if the proceeds of sale should be insufficient to pay the amount due to the plaintiff, the defendants might be directed to pay to the plaintiff the amount of deficiency.

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The original defendants to the suit were the executants of the bond, but it appearing that Indramani had died before its institution, the plaint was amended by adding the names of her legal personal representatives, *viz.*, Sreenath Moulick, Runga Nath Moulick, Hurri Nath Moulick, and Doydra Nath Moulick. It was alleged in the plaint that the cause of action accrued to the plaintiff on the last day of Magh 1282, the date fixed in the bond for the repayment of the debt.

The defendants in their written statement admitted the execution of the bond. They pleaded that the plaintiffs' claim to make them personally liable for the debt, was barred by limitation. Denying that they were the legal representatives of Indramani, they further alleged that the properties under mortgage belonged to their mother Anangamanjari Dasi, who was in possession of them as the owner thereof, under the terms of two wills, dated the 9th Magh 1269 and 15th Assar 1275, executed by their grandfather Gopal Lall Moulick. As regards one of the properties mortgaged, *viz.*, a five annas share of Tikhri, they advanced a special plea that the right to the said property was acquired by their mother by adverse possession of upwards of twelve years. They, therefore, contended that the mortgaged properties were not liable for the debt contracted under the bond, dated the 28th Magh 1281.

On a preliminary issue, *viz.*, whether or not Anangamanjari Dasi was a necessary party, being argued, the Subordinate Judge decided it in the affirmative. In accordance with this decision Anangamanjari was added as a defendant, though the plaintiff protested against the order.

Anangamanjari alleged in her written statement (1), that she knew nothing of the *karbarnama* nor of the bond of the 28th Magh 1281; (2), that the late Gopal Lall Moulick, under the wills mentioned above, gave his wife Indramani a title only to hold his estate for life; and that she had no right to alienate in any way or encumber it; (3), that she was in possession of the properties mortgaged, under an absolute right, created in her favor by the aforesaid will; (4), that in the five annas share of one of the mouzahs mortgaged, *viz.*, Tikhri, the executants of the bond had no sort of right, and that she had acquired a right thereto

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by adverse possession for upwards of twelve years; and (5), that Indramani had no necessity whatever for contracting the debt alleged by the plaintiff to be secured by the mortgage bond.

The only provisions of the two wills referred to above which it is necessary to state for the purpose of this report were, that Indramani was appointed executrix and manager and given a life interest in a portion of the estate, and that Anund Mohun was disinherited for reasons stated therein.

The lower Court awarded a partial decree in favor of the plaintiff directing that the money due to him might be realized by the sale of one of the mortgaged properties, *viz.*, mouzah Tikhri. That Court was of opinion that, as regarded the personal liability of the surviving obligors of the bond, the plaintiffs' claim was barred by limitation; that according to the terms of the two wills of Gopal Lall Moulick, which upon the evidence it found to be genuine, the first two mortgaged properties belonged to the defendant Anangamanjari in her absolute right; that the third property, mouzah Tikhri, not being covered by the will, was proved to be the property of Indramani Chowdhrain which devolved on her death on her legal representatives, Runga Nath Moulick, Sreenath Moulick, Doydra Nath Moulick and Hurri Nath Moulick, and that it being not established that the debt due under the bond of the 28th Magh 1281 was contracted for the benefit of the estate of the testator Gopal Lall, Indramani was not competent to create a valid charge upon the first two mortgaged properties covered by the two wills of Gopal Lall. The lower Court accordingly declared that mouzah Tikhri was alone liable for the mortgage debt.

Against that decree the plaintiff now appealed to the High Court.

Mr. *W. C. Bonnerjee*, Mr. *Mitter*, Mr. *Mookerjee* and Baboo *Saligram Sing* for the appellant.

Baboo *Gurudas Bannerjee*, and Baboo *Kishori Lall Sircar*, for the respondents.

The judgment of the High Court (MITTER and NORRIS, JJ.) was delivered by

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MITTER, J. who (after stating the facts set out above) continued as follows:—

The learned counsel for the appellant in arguing this appeal before us has urged various objections against this decision, and all of them may be classified under the three following heads:—

(1). That the decision as to the claim regarding the personal liability of the defendants being barred by limitation is erroneous.

(2). That the executants of the bond had full power to create a valid charge upon the family property, and that the appellant is entitled to enforce it against the properties mortgaged, whether the surviving executants of the bond have any right in them or not.

(3). That the construction put upon the two wills of Gopal Lall Moulick is erroneous. That under the terms of the aforesaid wills, the surviving executants of the bond have a subsisting saleable interest in the first two mortgaged properties.

We are of opinion that the decision of the lower Court upon the question of limitation is correct. The contention of the learned counsel for the appellant that Art. 132 of Sch. II of the Limitation Act of 1877 refers to a claim to recover money charged upon immoveable property quite irrespective of the remedy asked for, has been set at rest by the decision of the Judicial Committee of the Privy Council in the case of *Ramdin* v. *Kalka Pershad* (1). That decision was passed with reference to the corresponding article of the Limitation Act of 1871. That article provides a period of twelve years for suits for money charged upon immoveable property. The Legislature in the present Limitation Act has used a different phraseology, *viz.*, "to enforce payment of money charged upon immoveable property." The language of the present Act, *viz.*, "to *enforce*, &c.," is more in favor of the contention that the article in question refers only to suits "to enforce payment of money charged upon immoveable property" *by the sale of the said property*. This construction was put by the Judicial Committee of the Privy Council upon Art. 132 of the Limitation Act of 1871, the language of which did not suggest it so clearly as that of the present Limitation Act. The claim to make the defendants personally liable has

(1) L. R., 12 I. A., 12; I. L. R., 7 All., 502.

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therefore been rightly held to be barred by limitation, the present suit having been commenced more than six years after the accrual of the cause of action.

But the learned counsel further contended that, upon a true construction of the terms of the bond, the cause of action, *viz.* to make the defendants personally liable, has not yet accrued. We do not think that this contention is sound. The bond stipulates that "if the executants thereof fail to pay the money, according to the terms thereof, the creditor shall immediately institute a suit and realize the debt by the sale of the mortgaged property, and that if the proceeds of the sale fall short, from the person and other properties of the mortgagors." This stipulation, in our opinion, contemplates only one suit, and not two successive suits as contended by the learned counsel. It provides for two remedies by one suit, but the remedies are not to be simultaneously available. The remedy against the persons, and other properties of the mortgagors, is to be available only in the event of the first remedy against the mortgaged properties being found insufficient. We are, therefore, of opinion that the cause of action in respect of this part of the claim accrued to the appellant before this suit was brought, but that it is barred by limitation.

With reference to the second head of the objections urged against the judgment of the lower Court, it would be convenient to refer first to some of the cases in which the law relating to the power of a manager of a joint Hindu family to alienate in any way or to charge an ancestral property has been discussed.

In *Prannath Das* v. *Calishunkur Ghosal* (1), it was held that a sale by the manager of a joint Hindu family, without any express authority from his adult coparceners of a joint *taluk*, was valid and binding upon the coparceners, the conveyance having been executed while the manager was put under confinement by the servants of the superior zemindar for a balance of revenue, there being no other available means for discharging it.

In a note by Mr. Colebrook appended to the answer of the Pundit reported at p. 343, Strange's Hindu Law, Vol. II, he says: "I take the law to be that the consent of the sharers,

(1) 1 Sel. Rep., 60.

express or implied, is indispensable to a valid alienation of the joint property beyond the share of the actual alienor; and that an unauthorized alienation by one of the sharers is invalid beyond the alienor's share as against the *alienee*. But consent is implied, and may be presumed in many cases, and under a variety of circumstances, especially where the management of the joint property, entrusted to the part owner who disposes of it, implies a power of disposal; or where he was the only ostensible or avowed owner; and, generally, when the acts, or even the silence of the other sharers, have given him a credit and the alienee had not notice."

"I rather consider it to be a point of evidence, what shall suffice to raise the presumption of consent, or acquiescence, than a matter on which the Hindu Law has pronounced specifically."

In *Ashutosh Day* v. *Moheshchunder Dutt* (1), it was decided that a manager of a Hindu family has power to bind the rest by a mortgage when the money is raised for family purposes and *bonâ fide* so applied.

In *White* v. *Bishto Chunder Bose* (2), it was ruled that an alienation made by the managing member of a joint Hindu family cannot be questioned by another member, if he stands by and sees to the application of the purchase money for the benefit of the whole family without refusing to participate in it.

In *Peddamuthulaty* v. *N. Timma Reddy* (3), Frere and Holloway, JJ., were of opinion "that in a case of an alienation by a manager of a joint Hindu family, more laches or indirect acquiescence, short of the period prescribed by the statute of limitations on the part of the other members of the family is no bar to the enforcement of their right to question the alienation."

In *Shama Churn Chatterjee* v. *Tarucknath Mookerjee* (4), Bayley and Pundit, JJ., held that a nephew who was living with and had always acted as agent of his uncle, the manager of a joint family could not repudiate a mortgage executed by the uncle, without proof that the money so received by the uncle had not been applied by him towards the expenses of the joint family.

Following the case of *Ramlal Thakuredas* v. *Lakhmichand*

(1) 1 Fulton, 389.
(2) 2 Hay, 567.
(3) 2 Mad. H. C., 270.
(4) 5 W. R., 105.

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Muniram (1), Mr. Justice Pontifex held in *Johurra Bibee* v. *Sreegopal Misser* (2), that a manager of a Hindu family carrying on a family business, in the profits of which all the members of the family would participate, must have authority to pledge the joint family property, and credit for the ordinary purposes of the business."

It was held in *Ram Kishore Narain Singh* v. *Anund Misser* (3), that a member of a joint Hindu family who, being aware of an alienation by the manager, allows some twelve or thirteen years to go by without making the slightest objection, must be presumed to have been a consenting party to it.

In *Gopalnarain Mozoomdar* v. *Muddomutty Guptee* (4), Couch, C.J., held that the debts of a father are by the Hindu law a charge upon his estate in the hands of his sons, and if the family be in such a state that there must be a manager for the joint family, the manager, under the Hindu law, has power to sell or mortgage the ancestral property for the payment of the ancestor's debts.

In *Juggeewun-das Keeka Shah* v. *Ramdas Brijbookun-das* (5), the Judicial Committee of the Privy Council held that a mortgage which was not executed by a member of a Hindu family of a village which was ancestral property, the mortgage being executed by the other members, under circumstances of necessity to carry on a joint family firm, is binding upon all the members of the family including the person who has not joined in the execution of it, if it is proved that he was cognizant of it afterwards.

In *Bemola Dossee* v. *Mohun Dossee* (6), Garth, C.J., and Pontifex, J., held that adult members of an undivided Hindu family governed by the law of the Dayabhaga, who have an interest in a family business carried on by the managing member of the family, and who are maintained out of the profits of such business, must, in the absence of evidence, be taken to possess the knowledge that the business might require financing and to have consented to such financing. Where, therefore, a managing

(1) 1 Bom. H. C., App., 51.
(2) I. L. R., 1 Calc., 470.
(3) 21 W. R., 12.
(4) 14 B. L. R., 21.
(5) 2 Moore's I. A., 487.
(6) I. L. R., 5 Calc., 793 (*cf* p. 802).

member of such a family, in carrying on the family business, obtains an advance necessary for the purposes of the business, by pledging the joint family property, the mortgage is binding on all the members of the partnership.

The result of these cases, in our opinion, is, that an alienation made by a managing member of a joint family cannot be binding upon his adult co-sharers unless it is shewn that it is made with their consent, either express or implied. In cases of implied consent it is not necessary to prove its existence with reference to a particular instance of alienation. A general consent of this nature may be deducible in cases of urgent necessity, from the very fact of the manager being entrusted with the management of the family estate by the other members of the family. The latter, in entrusting the management of the family affairs in the hands of the manager, must be presumed to have delegated to the said manager the power of pledging the family credit or estate, where it is impossible or extremely inconvenient for the purpose of an efficient management of the estate to consult them, and obtain their consent before pledging such credit or estate—*Prannath Das* v. *Calishunkur Ghosal* (1), *Ramlal Thakursidas* v. *Lakhmichand Muniram* (2), *Johurra Bibee* v. *Sreegopal Misser* (3), *Gopalnarain Mozoomdar* v. *Muddomutty Guptee* (4), *Joggeewun-das Keeka Shah* v. *Ramdas Brijbookun Das* (5), are instances of the application of the principle enunciated above. *White* v. *Bishto Chunder Bose* (6), and *Ram Kishore Narain Singh* v. *Anund Misser* (7), are cases in which the consent of the subordinate members to a particular alienation was presumed from their acquiescence and other surrounding circumstances.

In the case before us, we are of opinion, upon the evidence adduced, that the charge upon a portion of the family property created by the bond of the 28th Magh 1281 is binding upon all the members of Gopal Lall Moulick's family who take under his wills.

(1) 1 Sel. Rep., 60.
(2) 1 Bom. H. C. App., 51.
(3) I. L. R., 1 Calc., 470.
(4) 14 B. L. R., 21.
(5) 2 Moore's I. A., 487.
(6) 2 Hay, 567.
(7) 21 W. R., 12.

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The answers to the interrogatories administered to the defendants in the lower Court having not been put in as evidence, by mere oversight, and we being of opinion that in the interests of justice the appellant should be allowed to rectify this error, without putting the respondents to the inconvenience of an adjournment, allowed the answers of one of the defendants, Runga Nath Moulick, who was present in Court, to be put in, and further allowed the counsel on both sides to examine *viva voce* the said Runga Nath Moulick, such examination being limited to the matters covered by the interrogatories administered to him in the lower Court. In order to clear up a material point in the case with reference to which we were convinced that Runga Nath Moulick, while under examination, was dishonestly attempting to suppress certain facts, we also allowed the decree in which Indramani Chowdhrain was plaintiff and Haran Krishna Moulick was defendant, to be put in evidence.

From this additional evidence, coupled with that which was taken in the lower Court, it is clear to us that nearly the whole of the money, borrowed under the bond of the 28th Magh 1281, was spent to defray the expenses of a suit which was brought by Indramani to recover the property of Gokul Chunder left by his widow Brojo Sundary. It appears that on the death of Brojo Sundary, the estate of Gokul was taken possession of by Anunda Mohun Moulick, the third son of Gopal Lall, on behalf of the minor Haran Krishna, who was set up as the adopted son of Gokul and Brojo Sundary. In the second para. of Gopal Lall's second will, dated 15th Assar 1275, the testator declared that the whole of the estate of Gokul had devolved upon him as heir-at-law of Gokul. By that will he disposed of that property in a certain way, the details of which it is unnecessary to state here. It seems to us that it was undoubtedly the duty of the managers of Gopal Lall's estate appointed under his wills to recover Gokul's estate, which Gopal Lall declared in his second will to be his. The suit which was brought by Indramani, with the active co-operation and advice of her grandsons for the recovery of Gokul's estate, was, in our opinion, a necessary suit, for a due administration of the testastor's estate. It is proved beyond doubt that the money covered by the bond, upon which the

present suit has been brought, was required for defraying the expenses of that suit. Indramani was successful in the first Court, but failed in this Court, on the appeal preferred, on behalf of Haran Krishna Moulick. There were two hearings of this appeal in this Court, and ultimately there was an appeal by Indramani to the Judicial Committee of the Privy Council, which affirmed the decision of the High Court. The success of the suit depended upon a very difficult question of the Hindu law relating to adoption, and it does not appear to us that Indramani and her grandsons, in taking up this case to the highest tribunal, acted in a way in which a prudent manager would not have acted for the due preservation of the testater's estate. We are further of opinion that in conducting this litigation, and in raising money by mortgaging a portion of the family property for defraying the expenses of this litigation, they acted with the implied consent of all the members of the family, including Anangamanjari. We are, therefore, of opinion that the mortgage created by the bond of the 28th Magh 1281 is binding upon all the defendants in this case, although Anangamanjari and Doydra Nath were not parties to it.

In this view of the case, it is unnecessary to express any opinion upon the remaining question in the appeal, *viz.*, as to the construction to be put upon the two wills of Gopal Lall Moulick. But as this case is appealable to a higher tribunal, we think it proper to record our decision upon that point also.

[His lordship then proceeded to deal with the third question raised in the appeal, referred to above, and to construe the two wills of Gopal Lall; and determine the interest of Anangamanjari in the two portions of the mortgaged property found by the lower Court to have been bequeathed absolutely to her, and then concluded as follows]:—

The result is that, in our opinion, the defendants who were the executants of the bond have a certain amount of saleable interest in the properties mortgaged in the bond of the 28th Magh 1281, and which interest at least is liable for the money due under it. But we have already decided, with reference to the second ground of appeal, that the whole of the mortgaged

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property is liable. The appellant is also we think entitled to recover the costs of this suit in both Courts.

The decree of the lower Court will be reversed, and in lieu thereof we direct that an account be taken of what is now due to the plaintiff, for principal and interest on the mortgage bond dated the 28th Magh 1281, and for his costs of both Courts, and that the defendants be directed to pay to the plaintiff, or into Court, the amount that may be found due on the taking of the said account, together with interest thereon, at the rate of 6 per cent. per annum from the date of the decree to the date of payment, within six months from the date of the decree. And we further direct that if defendants make default in paying the amount due within the time mentioned above, the mortgaged property be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale), be paid into Court and applied in payment of what is found due to the plaintiff, and that the balance, if any, be paid to the defendants, or other persons entitled to receive the same.

H. T. H. *Appeal allowed and decree modified.*

Before Mr. Justice Field and Mr. Justice O'Kinealy.

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RADHA PERSHAD SINGH AND ANOTHER (DECREE-HOLDERS) *v.* PHULJURI KOER AND ANOTHER (JUDGMENT-DEBTORS.)*

Appeal to Privy Council—Security for costs of respondent—Execution of decree against surety—Civil Procedure Code (Act XIV of 1882), *ss.* 253, 602, 603, 610.

A plaintiff, having preferred an appeal to Her Majesty in Council, was called upon to furnish security. Thereupon *A*, on behalf of the appellant, executed a security bond for the costs of the respondent. The appeal was dismissed with costs by Her Majesty in Council. On an application (by the respondent in the appeal) for execution to issue against the estate of *A*, the surety (who had died in the meantime)—

Held, that the liability of the surety under the security bond could not be enforced in execution of the decree of Her Majesty in Council.

Bans Bahadur Singh v. *Mughla Begum* (1) dissented from.

THIS was an application by the defendant for execution of a decree of the Privy Council, dated the 28th of May 1872, dis-

* Appeal from Order No. 116 of 1885, against the order of H. W. Gordon, Esq., Judge of Sarun, dated the 5th of March 1885.

(1) I. L. R., 2 All., 604.