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because we find that the defendant-vendor did all that was required of him by the *wajib-ul-arz* and the plaintiff did not avail himself of the right of purchase given by that *wajib-ul-arz*. We find also that the suit must fail as to the Moradabad property, because the plaintiff did not make a prompt demand as pre-emptor; and also for the reason we have just now explained, the suit must fail not only with regard to the Moradabad property, but also with regard to the share in the village; the plaintiff, having disentitled himself to obtain pre-emption in the Moradabad property, cannot obtain the share in the village. The appeal is dismissed with costs.

Appeal dismissed.

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July 12.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

LOKE INDAR SINGH AND OTHERS (PLAINTIFFS) v. RUP SINGH
(DEFENDANT). *

Unconscionable bargain—Gambling in litigation—Agreement opposed to public policy—Act IX of 1872 (Contract Act), s. 23.

For the purpose of meeting the expenses of an appeal to the Privy Council from concurrent decrees of the Subordinate Judge and the High Court, the plaintiff-appellant executed a deed of sale of certain property worth over Rs. 50,000 in consideration of the vendees providing the necessary security and moneys. The plaintiff experienced considerable difficulty in procuring the means to appeal. The vendees were not professional money-lenders, they did not put pressure on the plaintiff, but, on the contrary, he and his agent put pressure on them to agree to the terms of the deed. It appeared that, apart from the moneys borrowed by him from time to time, he was without even the means of subsistence; that he fully understood the nature of the deed; that his agents negotiated the transaction *bona fide* and, to the best of their powers, in his interest; that there was no fraud or deception on the part of the vendees; and that they performed all that they undertook as regards meeting the expenses of the appeal. Under the deed the plaintiffs were liable to furnish security to the extent of Rs. 4,000 and to advance Rs. 8,500 for other necessary expenses, and they did in fact furnish such security, and advanced sums aggregating Rs. 7,542. The appeal was successful. The appellant having failed to put the vendees in possession of the property conveyed by the deed, and recovered by him under the Privy Council's decree, the vendees sued him for possession of the property and mesne profits, afterwards agreeing that the Court should, in lieu thereof, award them compensation in money equivalent thereto.

* First Appeal No. 125 of 1886 from a decree of Maulvi Muhammad Abdul Basit Khan, Subordinate Judge of Mainpuri, dated the 24th April, 1886.

Held that, although the case was very different from cases in which persons interfered for their own benefit in litigation not their own, or in which mukhtars, vakils or persons of that class or professional money-lenders, taking advantage of the borrower's position, sued to enforce a contract obtained by them from him, and although the defendant was not entitled to sympathy, yet, judging by the disproportion between the liability incurred by the plaintiffs under the contract and the reward which they were to obtain in the event of the defendant's success, it must be concluded either that they did not believe his claim to be well founded, and consequently entered, though unwillingly, into a gambling transaction, or, if they believed the claim to be well founded, that the reward contracted for was excessive and unconscionable; and in either case the contract could not be enforced in its terms.

Held also that, if the doctrine of equity applicable to such cases were applied in favour of the borrower, it should also be applied in favour of the lender; that as there was no reason to suspect the plaintiffs' motives, it would be inequitable to relieve the defendant from all liability; that it was only fair that he should compensate the plaintiffs for the use of their security bonds from the date when they were deposited in the High Court to the earliest date after the judgment of the Privy Council when the plaintiffs could have obtained them back; that simple interest at 12 per cent. per annum on the amounts of the bonds for that period would be reasonable compensation for such use; that the defendant should also repay the amounts advanced by the plaintiffs for the expenses of the litigation with interest on each advance at 20 per cent. from the date on which it was made to the date of the decree in the present case; and that he should pay interest on the whole amount thus decreed at 6 per cent. from the date of the decree till payment.

Chunni Kuar v. Rup Singh (1), *Raja Sahib Prahlad Sen v. Baboo Budhu Singh* (2) and *Bowes v. Heaps* (3) referred to.

THE facts of this case are stated in the report of *Chunni Kuar v. Rup Singh* (1) and in the judgments of the Court.

The suit was based on a deed of sale executed in favour of the plaintiffs by the defendant on the 13th March, 1882, in the following terms:—

“ I, Raja Rup Singh, son of Raja Mukat Singh, caste Thakur Sengar, rais of Bhara, pargana Uraiya, zila Etawah, do hereby declare as follows:—Whereas I instituted a suit against Rani Baisni, widow of Raja Mohendra Singh, deceased, caste Thakur, *masnad-nashin* (occupying the throne) of the Bhara Raj, and the Collector of Etawah as the manager of the Court of Wards, for recovery of possession of the Bhara estate, containing of moveable and immoveable property, specified in the plaint, at a valuation of Rs. 3,10,265-8 in the District Court of Mainpuri, where it was dismissed. As I was

(1) *Ante*, p. 57.

(2) 12 Moo. I. A. 275.

(3) 3 Ves. & B., 117.

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possessed of no means, it was difficult for me to file an appeal in the High Court, and I appealed by giving a bond to Musammut Chumni Kuar, widow of Sah Panni Lal, *vais* of Marehra, zila Etah, but unfortunately for me the appeal was dismissed. Thus arose the necessity for filing an appeal to the Privy Council. It is clear I have not a pice, and my only hope for justice lies in an appeal to the Privy Council. I have therefore with entreaties got Raja Loke Indar Singh, Sheikh Nasrat Hussain, Lala Bhikari Das, Munshi Har Narain, Bibi Chumni, Kuar, and Kuar Dharam Singh, persons belonging to the first class given below, to consent that they should meet the costs of the Privy Council, including security, by way of a help to me, and should in lieu thereof be the proprietors of an eighth share of the property involved in the case, with the exception of those articles. They have accepted the proposal and deposited the security and the translation fees, and have undertaken to pay the other expenses of the Privy Council appeal. Dewan Ganga Prasad has, from the very beginning, tried in the case, and I owe to him his pay and compensation for his labour. I have got him to agree to take Rs. 5,000 out of the second class of the claim, *i. e.*, that for debts when the case is decreed. I do therefore willingly and voluntarily and while in a sound state of my body and mind execute this deed in favour of the following persons :—

“My suit consists of four claims :—

“1. For mauza Bhara the Raj Mahal, together with other villages appertaining to it, bearing a jama of Rs. 34,463-8, five times of which, *viz.*, Rs. 1,72,317-8, is given in the plaint as the valuation.

“2. Outstanding debts of the estate amounting to Rs. 64,155.

“3. Notes worth Rs. 21,000.

“4. Cash and the gaubhi, &c., valued at Rs. 52,703.

“Of these four claims, the last two have been exempted from this contract ; and I hereby sell the first two claims, amounting to Rs. 29,559-1, to the first class of the following persons, and Rs. 5,000, out of Rs. 56,135-4, the balance left after deducting Rs. 8,019-12, the eighth share referred to above, from the said sum of Rs. 64,155, the second sort of claim, to Dewan Ganga Prasad. The consideration of this sale as against the first class of vendees is Rs. 12,500, the estimated cost of the Privy Council appeal, consisting of Rs. 4,000 for the security of the Privy Council costs, and Rs. 8,500 for the translation of papers, the pleader's fee and other expenses, of every sort in the said department, and as against the second class of vendees, Rs. 2,500, which has been agreed to be his pay from the beginning of July, 1877, *i. e.*, the institution of the suit. Thus the whole amount of the sale consideration is Rs. 15,000, with reference to which the court-fee has been paid. I or my heirs, successors and representatives shall not question the genuineness of this sale-deed. The sale-deed shall be acted upon on the following conditions :—

“1. The names of the purchasers and the details of the shares are given at the foot of the sale-deed, and according to them they shall be the sharers in the property sold, and in proportion to their respective shares, they shall be liable to pay the sale-consideration, *viz.*, security and other expenses of the appeal to the Privy Council.

"2. After the passing of a decree by the Privy Council, the purchasers shall have the power to join me in the execution of the decree, to the extent of their share under this sale-deed, and obtain possession of the property sold, and I shall make them co-sharers under this sale-deed. Should there be any remissness on my part in the conduct of the case, or should I come to terms with the opposite party, or there be any apprehension of a failure of the case by any reason, accident or unforeseen event, and even in the absence of any such cause, if the purchasers have any desire to join in the case, they shall have the power, under this document, to join with me to the extent of the property sold, and get their names recorded as the appellants.

"3. In connection with the powers mentioned above, it has been agreed upon that, after the passing of the decree, the purchasers of the first class shall have an eighth share in all the villages concerned. Should I offer to give in lieu of the above entire villages, excepting villages, 1 Bhara, 2 Haroli, 3 Sikrauri, 4 Agana, 5 Barera, 6 Gauhani Kalan, 7 Mahewa, 8 Sijanpur, 9 Athesa and 10 Malgawana, yielding profits equal to an eighth share, they (purchasers) shall accept the same without an objection after seeing that the profits amounted to an eighth share.

"4. The purchasers have no concern whatever with the costs already incurred in the lower Courts, and they are not liable or responsible for the same, for they had no concern with the case so long as it pended in the lower Courts. They are only liable for costs that may be incurred in the Privy Council, in respect of which a security has been deposited. They have accordingly deposited the security-money. The remaining expenses are those which may be made on behalf of the appellant.

"5. I am liable to satisfy the old bond executed as between myself and Chunni Kuar, and the demand of the pleaders in the District Court, according to the terms of the deed in their favour. The purchasers, their property or the property sold shall have no concern with the same. The purchasers will get the property free from all liability.

"6. In lieu of the pay of Dewan Ganga Prasad, who has, ever since the institution of the suit, taken great pains to help the conduct of the case, I have sold to the said Dewan Rs. 5,000, out of Rs. 56,135-4, the balance of the debts due to me, forming the second class of claim. After the decree, he and his representatives and heirs shall have the right and power to recover it under this sale-deed, from the debtors, from myself or from the property claimed in this case. I, my heirs and representatives shall have no objection. I have therefore executed these few words by way of a sale-deed, that they may serve as evidence and be used when needed."

In pursuance of this agreement, the plaintiffs deposited in the High Court a bond for Rs. 4,000 as security for the appeal, and advanced sums aggregating Rs. 7,542 for translation and other expenses. The defendant, on the 24th April, 1884, obtained a decree in the Privy Council, reversing the decision of the High Court and awarding him possession of the estate claimed by him in that

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suit, and an application for review of judgment was rejected by the Privy Council on the 29th November, 1884. The plaintiffs, on the 31st January, 1888, brought this suit against the defendant for possession of the property conveyed by the deed.

The Court of first instance dismissed the claim, on the ground that the agreement contained in the deed of the 13th March, 1882, was unconscionable, extortionate, and opposed to public policy. The plaintiffs appealed to the High Court.

Upon the case coming on for hearing before Edge, C. J., and Tyrrell, J., the appellants, through their counsel, informed the Court that in the event of the Court's decree being in their favour they were willing to take, in lieu of the one-eighth share included in the deed, compensation in money equivalent to the share. The Court directed that a commission should issue to the Collector of Etawah requesting him to make an investigation into the market-value, on the 1st December, 1884, of the villages in which the one-eighth share was claimed, and to report thereon to the Court. The Collector reported the market-value of the villages in question on the 1st December, 1884, to have been 4 lakhs of rupees. It thus appeared that the value of the one-eighth share conveyed by the deed of the 13th March, 1882, was Rs. 50,000. The case again came on for hearing before Edge, C. J., and Tyrrell, J.

The Hon. *T. Coulson*, the Hon. Pandit *Ajudhia Nath*, Pandit *Sundar Lal* and Pandit *Moti Lal Nehru*, for the appellants.

Mr. *D. N. Banerji*, for the respondent.

EDGE, C. J., and TYRRELL, J.—The suit was brought in the Court of the Subordinate Judge of Mainpuri on a sale-deed executed by the defendant on the 13th March, 1882. The Subordinate Judge dismissed the suit with costs. From that decree this appeal has been brought. We have in our judgment in *Chunni Kuar v. Rup Singh* (1) stated nearly all the material facts which were antecedent to the execution by the defendant of the sale-deed of the 13th March, 1882, and also the result of the litigation in the previous

(1) *Ante*, p. 57.

suit, in which the now defendant obtained possession of the Raj Bhara estate and the accumulated income of that estate. So far as the facts concerning the execution of the deed in this case are concerned, there is but little to add. Those facts are given in detail in the evidence of Muhammad Mohsin, which we believe.

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We have no doubt, in fact we find, that the defendant perfectly well understood the nature and effect of the deed of the 13th March, 1882; we also find that his agents who negotiated that transaction acted *bonâ fide* and to the best of their powers in the interest of the defendant, placed as he was in a position of great difficulty at the time. Of anything like actual fraud or of any deception on the part of the plaintiffs or the defendant's agent we find there was none. It has been contended on the part of the defendant, that, having regard to the judgments of their Lordships of the Privy Council in case of *Raja Sahib Prahlad Sen v. Babu Budhu Singh* (1) we cannot give any relief whatsoever to the plaintiffs here. That case was one essentially different from the case before us. In that case the assignee or vendee was not the person seeking to enforce the contract. The person there who was seeking to enforce the contract was a person who had purchased the contract from the original vendee for a comparatively small sum. It was plain in that case that if the plaintiff failed to enforce the contract he had purchased, he was not in a position to fall back on and ask for the consideration his assignor had given. That was not the right which he had purchased. There is the other distinction between that case and this, that here the plaintiffs performed all that they undertook to perform, whereas in the case of *Raja Sahib Prahlad Sen v. Babu Budhu Singh* (1) the original vendee had not nor had the assignee performed the vendor's part of the contract. There were two other cases referred to which in the view we take of the case we need not consider. On behalf of the defendant it was also contended that it was a gambling transaction, that the bargain was unconscionable, and that to enforce the contract would be against public policy. In *Chunni Kuar v. Rup Singh* (2) we have given expression

(1) 12 Moo. I. A. 275.

(2) *Ante*, p. 57.

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to what we have conceived to be the law bearing on cases of this kind. In this case undoubtedly the defendant was in a position of very great distress, his suit had been dismissed in the Court of the Subordinate Judge, his appeal from the decree of the Subordinate Judge had been dismissed by this Court, he was without any means, and unless he obtained assistance on such security as he could offer, he could not have filed or prosecuted his appeal to the Privy Council. So far as we have been able to ascertain, he had not even the means of subsistence. That he had a good case was proved by his success in the appeal to the Privy Council. That people generally considered that his case was a bad one may be inferred from the difficulty he met with in procuring the means to appeal to the Privy Council. At that time he had the decrees of the two Courts against him. The plaintiffs in this case did not seek the defendant. They did not press the defendant to accept the terms contained in the deed of the 13th March, 1882. It was the defendant and his agent who put pressure on the plaintiffs to advance the money on the terms contained in that deed. Some of the plaintiffs are not money-lenders by profession. Two of them are independent gentleman who were residing on their own estates. That the defendant, even after he had obtained his decree in the Privy Council, never thought there was anything unconscionable in the transaction may be inferred from the fact it was he who proposed that the plaintiffs, instead of taking the shares in the village assigned by the deed of the 13th March, 1882, should take a sum of Rs. 50,000. At that time apparently this defendant Raja, thankful for the assistance which had been rendered to him, an assistance which placed him in the position of a wealthy man and relieved him from the position of being a man without the means of subsistence, honestly intended to perform his contract and discharge the debt which he had incurred. It was not until after that time that this gentleman thought it advisable, having obtained all the benefit which he needed from the use of the plaintiffs' money, to invoke the assistance of the law to enable him to avoid the performance of a contract which the plaintiffs believing in his honour had treated as a valid contract, and on which they had advanced their money and incurred liability. There

is in our judgment a very wide difference between this case and many other cases in which persons interfere in litigations not their own for their own benefit. If the plaintiffs here had been professional mukhtárs, vakíls or persons of that class, or if they had been professional money-lenders who had taken advantage of the position of the defendant to obtain from him a contract of this kind, we should without hesitation have given them no relief whatever. But they are not persons of that class, they had not volunteered their assistance to promote the litigation ; they had given reluctantly this assistance to help a neighbour in a case which was apparently almost hopeless at the time. They trusted in the honour of the Raja as a native gentleman. He had no security to offer except what then appeared to be the chance of his succeeding in a case in which he had been twice defeated. We confess that in this case our sympathies are entirely with the plaintiffs ; and we do not refuse to decree their claim for possession of the share out of any sympathy for the defendant. As we have pointed out in the judgment we have already referred to, the fact that the borrower had fruitlessly sought assistance from other persons who refused the bargain on the ground that it was not advantageous, has been held by the Courts in England to be merely proof of the distress of the borrower and not evidence that the bargain was a fair one and not an unconscionable one. In this case, judging by the disproportion between the liability which the plaintiffs incurred under the contract and the amount of the reward which they were to obtain in the event of the defendant succeeding in the Privy Council, we are compelled to conclude either that the plaintiffs did not believe that the defendant's claim in the action was well founded, and consequently entered although unwillingly into a gambling transaction, or that if they did believe that his claim was well founded, then the reward which under their contract they were to obtain was excessive and unconscionable. In either event we could not enforce this contract in its terms. As was said by Sir William Grant in the case of *Bowes v. Heaps* (1), "It is not, however, every bargain which distress may induce one man to offer that another is at liberty to accept." It is true that Sir William

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Grant was dealing in that case with a reversioner or a remainder man, but we are told by their Lordships of the Privy Council that the doctrine of equity which applies in those cases is to be applied in India and apparently in cases which it would not be applicable in England. If we are to apply that doctrine of equity in favour of the borrower, we should also apply the doctrine of equity in such case in favour of the lender. It is contended in this case on behalf of the defendant that we should not even give a pice to the plaintiffs who advanced their money and deposited their security-bond in this Court. As we have said, if this was a case in which we had reason to suspect the motive of the lenders, we would without hesitation leave them without any remedy so far as we are concerned. But this is a totally different case, and we think it would be inequitable on our part if we were to relieve the defendant from all liability to the plaintiffs. On the 31st January, 1881, the plaintiffs deposited in this Court their security-bond for Rs. 4,000 as security for costs to be incurred in the Privy Council. Their Lordships of the Privy Council gave judgment in the appeal in March or April, 1884, in favour of the defendant. On the 21st April, 1884, the Registrar of the Privy Council gave notice of the decree under the seal of the Council. Allowing for the course of the post, the plaintiffs at the earliest could not have obtained their bonds from this Court before the 21st May, 1884. We think that it is only fair between these parties that the defendant should be obliged to compensate the plaintiffs for the use of their bonds during that time, that is to say, from the 31st January, 1881, until the 21st May, 1884. We think that a most reasonable compensation to be paid by the defendant to the plaintiffs for the use of their bonds for that time is simple interest at 12 per cent. *per annum* on the amount of those bonds for that period. The plaintiffs advanced Rs. 783 for expenses of translation and printing of the documents in this Court; of that sum Rs. 691 was actually paid into this Court by the 10th May, 1881, and from that date we allow interest on that sum until the date of our decree at 20 per cent. *per annum*. Rs. 92 of the Rs. 783 were paid by 22nd September, 1882; the precise date we cannot ascertain, but this is the date on which the papers were forwarded

to the Privy Council, and similar interest is allowed on the Rs. 92 from the 22nd September, 1882, until the date of our decree. Then comes the item of Rs. 4,759; that money was advanced, a great portion of it in the early months of 1883, and the whole of it by the 1st August, 1883. We take that as a lump sum and we take the date of the 1st August, 1883, a date rather in favour of the defendant, as a starting point for interest, and we allow on that sum of Rs. 4,759 similar interest to the date of our decree from the 1st August, 1883. There only remains a sum of Rs. 2,000. This was a sum which was advanced by those parties for the purpose of the review. Unfortunately Pandit *Nand Lal*, a well known pleader of this Court, who might have given us precise information on that point, is not now alive, but we know from the evidence that a sum of Rs. 2,000 was advanced for the purpose of the review which was applied for in the Privy Council, and we conclude that it must have been advanced before the 29th November, 1884, as on that date their Lordships of the Privy Council rejected the application for review. We allow similar interest on that Rs. 2,000 from the 29th November, 1884, to the date of our decree, and we decree that the defendant do pay to the plaintiffs the several sums mentioned by us together with interest from the date which we have mentioned. We do not include in the amount decreed the amounts for which the bond was given. We also decree the costs of this litigation to be paid by the defendant to the plaintiffs, and further decree that the amount above indicated which we may call debt and costs will bear interest at 6 per cent. from the date for our decree till satisfaction and payment. The result is we allow with costs this appeal to the extent indicated by us (1).

Appeal allowed in part.

(1) See *Fry v. Lane* (L. R., 40 Ch. D., 312).

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