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not by virtue of the mortgage. The decision in this suit is not intended to prejudice that right. But for the above reasons their Lordships hold that the suit against the other defendants was rightly dismissed. The High Court altered the decree of the Subordinate Judge by giving to the Appellant interest on the Rs. 93,000 at 5 per cent. per annum, from the 27th of November 1881 to the 13th of February 1889, the date of its decree. In the mortgage deed it is covenanted that even if a suit is instituted, interest shall be paid on the whole or part of the principal amount at the rate of Re. 1-8 per cent. per mensem (18 per cent. per annum), and the decree should be varied by giving interest at that rate instead of 5 per cent. to the 12th of February 1886 the date of the institution of the suit.

Their Lordships will humbly advise Her Majesty accordingly. The appellant having substantially failed will pay to the respondent, Naunidh Lal, his costs of this appeal.

Solicitor for the appellant :—*Mr. J. F. Watkins.*

Solicitors for the respondent :—*Messrs. Pyke and Parrott.*

P. C. 1893 *March* 17. *April* 28.

RAJA MOHKAM SINGH AND OTHERS, (APPELLANTS) *v.* RAJA RUP SINGH AND OTHERS, (RESPONDENTS).

[On appeal from the High Court at Allahabad.]

Agreement to supply money for another person's suit—Excess of the reward rendering such agreement inequitable—Champerty.

A fair agreement to supply money to a suitor to carry on a suit, in consideration of the lender's having a share of the property sued for, if recovered, is not to be regarded as necessarily opposed to public policy, or merely, on this ground, void. But in agreements of this kind the questions are, (*a*) whether the agreement is extortionate and unconscionable, so as to be inequitable against the borrower; or (*b*) whether the agreement has been made, not with the *bonâ fide* object of assisting a claim, believed to be just, and of obtaining reasonable compensation therefor, but for improper objects, as for the purpose of gambling in litigation, or of injuring others, so as to be, for these reasons, contrary to public policy. In either of these cases, effect is not to be given to the agreement. Here, upon the facts the above case (*b*) did not arise, and this agreement was not contrary to public policy. But this agreement fell

Present: LORD WATSON, LORD MORRIS, SIR R. COUCH and the HONOURABLE GEORGE DENMAN.

within case (*a*), and the judgment of the High Court was affirmed, that the agreement was so extortionate and unconscionable, in regard to the excess of the reward, that it was inequitable and, therefore, not enforceable against the defendant.

Ram Coomar Coondoo v. *Chunder Canto Mookerjee* (1) referred to and followed.

APPEAL from a decree (2) (12th July 1888) varying a decree (24th April 1886) of the Subordinate Judge of Mainpuri.

The question raised by this appeal related to an agreement by a suitor, in consideration of an advance of money being made to him for carrying on his suit, to give the lender a share of the property in litigation in the event of success.

In this suit, commenced on the 31st of July 1885, Raja Loke Indar Singh, since deceased, and now represented by his son, Raja Mohkam Singh, the present appellant, was plaintiff. The object of the suit was to enforce against the defendant, Raja Rup Singh, an agreement, admitted to have been executed on the 13th of March 1882. By this, which was in the form of a deed of sale, in consideration of the plaintiffs' paying the costs of an appeal to Her Majesty in Council from a decree, preferred by Raja Rup Singh, and in the event of success, they were to have a one-eight share of the property involved. This estate was the Bhara zamindari claimed by Raja Rup Singh; and the plaintiffs were also, under the agreement, to have the like share in an outstanding debt of Rs. 64,155, due to that estate, with interest. The material part of this instrument is set forth in their Lordships' judgment, where the facts appear. They are also stated in the report (where the agreement is set forth at length) of *Loke Indar Singh* v. *Rup Singh*, (2).

The circumstances which preceded the execution by the defendant of the sale deed of the 13th of March 1882, as well as the result of the litigation in a prior suit, in which Rup Singh obtained possession of the Bhara estate, and its accumulated income, appear in the judgment of the High Court, as well as observations upon the law of champerty, in *Chunni Kuar* v. *Rup Singh*, (3).

(1) L. R., 4 I. A., 23; I. L. R., 2 Calc. 233.

(2) Reported, *sub nomine Loke Indar Singh and others* v. *Rup Singh*, in I. L. R., 11 All, 118.

(3) I. L. R., 11 All., 57.

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The defendants had disbursed, in pursuance of the arrangement, about Rs. 8,000, having also stood security for Rs. 4,000, which would have been payable, had the appeal failed. It did not fail, but succeeded; see *Rup Singh* v. *Rani Baisni* (1).

The plaintiffs claimed the one-eighth share, but the defendant, after some negotiations, refused to make any payment.

The first Court dismissed the claim upon the ground that the plaintiffs had obtained the execution of the document of the 13th of March 1882, in an inequitable way. That decision was reversed by the High Court on an appeal by the plaintiffs. A division Bench (EDGE, C. J., and TYRRELL, J.) gave judgment in favour of the plaintiffs, but not to the full extent claimed, holding them entitled to recover the amount of their advances with interest, and also compensation for their having become security for the costs of the defendant; but the Court held them not entitled to any share in the Bhara estate. The judgment is reported in I. L. R., 11, All., at p. 122.

On this appeal,

Mr. *R. V. Doyne* and Mr. *G. E. A. Ross*, for the appellants, contended that they were entitled to a decree for the full amount of their claim, either in land of the Bhara estate, or its value, there being nothing inequitable in the agreement. It was not unconscionable either in regard to the amount of the reward, or on account of it having been obtained by extortionate acts. It had been freely entered into by the respondent, who had benefited by it. At first, on the arrival in India of the order in Council, in favour of Rup Singh, he had expressed his willingness to carry out the agreement. But afterwards, when a question had arisen as to whether the plaintiffs should receive their share in land, or in cash, he had offered Rs. 50,000; and then, finally, refused to give anything. The appellants to obviate any difficulty arising from the impartible character of the estate, offered in the Court below to take their one-eighth in money; and a reference was made to the Collector of

(1) L. R., 11 I. A., 149; I. L. R., 7 All. 1.

the district, to inquire as to the value of the Bhara estate. This was found by him to be worth Rs. 4,00,000. It was submitted that the appellants were entitled in the proportions specified in the agreement.

Upon the question whether the zamindar of an impartible zamindari estate could alienate a part of it, reference was made to *Rani Sartaj Kuari* v. *Rani Deoraj Kuari* (1), *Uddoy Adittya Deb* v. *Jadub Lal Adittya Deb* (2).

As to the question of placing a reasonable construction on the contract, reference was made to *Gunga Pershad Sahu* v. *Maharani Bibi* (3), *Ram Coomar Coondoo* v. *Chunder canto Mookerjee* (4), *Fischer* v. *Kamala Naicker* (5), *Raja Rup Singh* v. *Rani Baisni and the Collector of Etáwah* (6).

The respondent did not appear.

Their Lordships' judgment on a subsequent day was delivered by SIR R. COUCH.

The respondent is the younger and only brother of Mohendra Singh, Rais of the ancient impartible estate of Bhara or Bhauri, who died in September 1871 without leaving a son, but leaving a widow, Rani Baisni, who took possession of and held her husband's estate under an alleged title as widow. The respondent instituted a suit against her in the Court of the Subordinate Judge of Mainpuri to recover possession of the estate as impartible and descending to him under the ancient usage of the family, contending that after the decease of a Raja of Bhara, his nearest and eldest male heir succeeds him to the exclusion of the other male heirs and the total exclusion of women. The suit was dismissed by the first Court on the 25th of September 1878, and the respondent's appeal to the High Court at Allahabad was dismissed on the 7th of May 1880.

On the 13th of March 1882 an instrument of sale upon which the question in this appeal arises, was executed by the respondent. It

(1) L. R., 51 I. A., 51; I. L. R., 10 All., 272.
(2) I. L. R., 5 Calc., 113.
(3) L. R., 12 I. A., 47; I. L. R., 11 Calc., 379
(4) L. R., 4 I. A., 23; I. L. R., 2 Calc., 233.
(5) 8 Moo, I. A., 170.
(6) L. R., 11 I. A., 149; I. L. R., 7 All., 1.

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recites the institution of the suit against the widow, its dismissal, and the dismissal of the appeal, and proceeds as follows :—

"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, (since deceased and now represented by the appellant Raja Mohkam Singh) Sheikh Nasrat Hussain (Lala Bhikhari Das, Munshi Har Narain) Bibi Chunni 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 proprietor 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." The Respondent then by the deed sold an eighth share in the Bhara estate and of outstanding debts due to the estate, amounting to Rs. 64,155 to the persons before named; and it is stated that the consideration for the sale was 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.

The appeal to Her Majesty in Council was successful. The decrees of both the Lower Courts were reversed, and it was decreed that the plaintiff (the present respondent) should recover possession of the estate (L. R. 11, I. A. 149). On the 13th of August 1884 he was put in possession of it, and having refused to give to the purchasers any part of the eighth share, a suit was on the 31st of July 1885 brought against him to recover it.

The plaintiffs had, on the 31st of January 1881, deposited in the High Court their security bond for the costs of the appeal, and they afterwards advanced for the costs of translation and remittance to England the sums of Rs. 783, Rs. 4,759, and Rs. 2,000.

The law applicable to the case is stated in the judgment of this Board in *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*, (1) "Their Lordships think it may properly be inferred from the decisions above referred to, and especially those of this tribunal, that a fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being, *per se*, opposed to public policy. Indeed, cases may be easily supposed in which it would be in furtherance of right and justice, and necessary to resist oppression, that a suitor, who had a just title to property, and no means except the property itself, should be assisted in this manner. But agreements of this kind ought to be carefully watched, and when found to be extortionate and unconscionable, so as to be inequitable against the party, or to be made, not with the *bonâ fide* object of assisting a claim believed to be just, and of obtaining a reasonable recompense therefor, but for improper objects, as for the purpose of gambling in litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy,—effect ought not to be given to them."

The latter part of this passage is not applicable to the present case. The question is whether the agreement was so extortionate and unconscionable as to be inequitable against the respondent. The Subordinate Judge dismissed the suit. He held the sale not to be equitable and just, but he gave other reasons for dismissing the suit which cannot be considered satisfactory. He says:—"It was by no means becoming of the plaintiffs who had made him (the respondent) a Raja to have now joined together in bringing him down from the dignity of a Raja to the state of a subject, and themselves becoming the Rajas at his expense." And he appears to have thought the impartibility of the estate to be an answer to the plaintiffs' claim, for he says:—"Thus, if the plaintiffs' claim were to be decreed now, it would necessitate a partition of the eighth part of the estate to be awarded to them, who might be called Rajas or Maharajas thereof. But this would be altogether against the

(1) L. R. 4, I. A. 23.

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intent of the Privy Council ruling, and it would be as if it were cancelling the said ruling." In fact this judgment appears to their Lordships to be founded, partly at least, on reasons which are inapplicable to the question. The High Court on appeal reversed the decree of the Subordinate Judge and decreed that the plaintiffs should recover from the Respondent Rs. 1,588 interest on the amount of the security bonds at the rate of 12 per cent. per annum from the date when they were deposited in Court until the allowance of the appeal by her Majesty in Council; Rs. 691 expenses of translation and printing, and Rs. 990-13-4 interest thereon at 20 per cent. per annum; Rs. 92 also on account of translation and Rs. 106-14-4 interest thereon from the 22nd of September 1882 to the 12th of July 1888, the date of its decree; Rs. 4,759 money advanced, and Rs. 4,711-6-6 interest thereon at 20 per cent. to the same date; Rs. 2,000 advanced for the purposes of review and Rs. 1,447-5-6 interest thereon, with costs in the High Court and Court below—amounting in the aggregate to Rs. 19,448-12-8. In their judgment the High Court say that after the appeal in the former suit from the Court of the Subordinate Judge had been dismissed, the respondent 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; that the plaintiffs did not press him to accept the terms contained in the deed. After giving their reasons for making the above decree, which are generally that the plaintiffs were not professional money-lenders who had taken advantage of the position of the defendant, and had not volunteered their assistance to promote litigation, they say: "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 his contract in its terms." The more favourable view for the plaintiffs is that they believed the claim to be well founded. Their Lordships adopt this, and think that the question whether the deed is contrary to public policy does not arise. They consider the finding of the High Court to be that the reward is excessive and unconscionable. It is evident from their judgment that they felt constrained to come to this conclusion. They say: "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." A decision thus arrived at ought not to be set aside on appeal unless it clearly appears to be wrong, and their Lordships having heard all that the learned Counsel for the appellants could urge against the decree of the High Court are unable to say that they think that it is wrong. They will therefore humbly advise Her Majesty to affirm it, and to dismiss the appeal.

Appeal dismissed.

Solicitors for the appellant:—*Messrs. Barrow and Rogers.*

APPELLATE CIVIL.

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

MANSAB ALI (PLAINTIFF) v. NIHAL CHAND AND OTHERS (DEFENDANTS).*

Letters Patent s. 10—*Civil Procedure Code, ss.* 2, 556, 558, 587, 588, 632—*Appeal, dismissal of for default* —"*Order*"—"*Decree.*"

No appeal will lie under s. 10 of the Letters Patent from the order of a single Judge of the High Court dismissing an appeal for default.

The decision of a Court dismissing a suit or an appeal for default is an "order" and not a "decree." *Nand Ram* v. *Muhammad Bakhsh* (1), *Mukhi* v. *Fakir* (2), *Dhan Singh* v. *Basant Singh* (3), *Chand Kour* v. *Partab Singh* (4), *Muhammad Naim-ullah Khan* v. *Ihsan-ullah Khan* (5), cited. *Ram Chandra Pandurang Naik* v. *Madhav Purushottam Naik* (6), not followed.

* Appeal No. 3 of 1892 under s. 10 of the Letters Patent.

(1) I. L. R., 2 All. 616.
(2) I. L. R., 3 All. 382.
(3) I. L. R., 8 All. 519.
(4) I. L. R., 16 Calc. 98.
(5) I. L. R., 14 All. 226.
(6) I. L. R., 16 Bom. 23.