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houses for the purpose of sacrifice, provided that in the exercise of such right they do not commit a nuisance or offend any rule or regulation lawfully promulgated and applicable to that village. We also grant an injunction restraining the defendants from interfering with the rights of the plaintiffs appellants as above declared. The defendants respondents must pay the costs of this appeal as also the costs in the Court below.

*Appeal decreed.*

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February 26.

*Before Mr. Justice Banerji and Mr. Justice Richards.*

THAKUR PRASAD AND ANOTHER (PLAINTIFFS) v. GAURIPAT RAI  
AND ANOTHER (DEFENDANTS).\*

*Act No. VIII of 1890 (Guardians and Wards Act), sections 29 and 31—Guardian and minor—Mortgage of minor's property to secure a loan sanctioned by the Court—Interest.*

In all cases where sanction is given for the raising of loans on the security of the property of minors, it is the duty of the Judge granting sanction to specify in his order of sanction not only the amount to be raised and the property to be mortgaged, but also the rate of interest, or at least the maximum rate of interest, at which the loans are to be raised. If nothing is said in the order as to the rate of interest, the lenders are entitled only to a reasonable rate of interest on the moneys advanced. *Ganga Pershad Sahu v. Maharani Bibi* (1) followed.

THE facts which gave rise to this appeal were as follows:—

The suit was one for sale upon two mortgages, dated respectively the 14th and the 18th of June 1897. The mortgages were executed by one Sripat Rai as the guardian of the defendants respondents Gauripat Rai and Kamlapat Rai with the sanction of the District Judge. The amount of the first mortgage was Rs. 1,400 and that of the other Rs. 1,800 and they carried interest at the rate of Re. 1-8 per cent. per mensem, that is, Rs. 18 per cent. per annum. The learned judge in granting sanction for the raising of the loans permitted the guardian Sripat Rai to raise as much as he could by hypothecating a one anna share, though he directed the guardian not to spend more than Rs. 1,100 on the marriage of Gauripat Rai, the first respondent for the expenses of which the loan was to be raised.

\* First Appeal No. 129 of 1906 from a decree of Achal Bihari, Subordinate Judge of Gorakhpur, dated the 8th of February 1906.

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The Court below has found that the plaintiff actually paid Rs. 1,400 on account of the first bond. As for the second bond it was represented to the Judge that Rs. 1,887 were required for redeeming certain ornaments which had been pawned with one Kali Charan. The learned Judge sanctioned the raising of that loan, and the ornaments are said to have been redeemed. The Court below allowed to the plaintiffs interest at the rate of 12 per cent. per annum; which it considered to be reasonable, and reduced the contractual rate, on the ground that the District Judge in sanctioning the raising of the loans did not specify the rate of interest at which the loans were to be taken. The plaintiffs appealed to the High Court urging that they were entitled to the full contractual rate of interest on the mortgages in suit.

The Hon'ble Pandit *Madan Mohan Malaviya* and *Munshi Gulzari Lal*, for the appellants.

Mr. *Abdul Raof* and *Munshi Ishwar Saran*, for the respondents.

BANERJI and RICHARDS, JJ.— This was a suit for sale upon two mortgages, dated respectively the 14th and the 18th of June 1897. The mortgages were executed by Sripat Rai as the guardian of the respondents with the sanction of the District Judge. The amount of the first mortgage was Rs. 1,400 and that of the other Rs. 1,800, and they carried interest at the rate of Re. 1-8 per cent. per mensem, that is, Rs. 18 per cent. per annum. The learned Judge in granting sanction for the raising of the loans permitted the guardian Sripat Rai to raise as much as he could by hypothecating a one-anna share, though he directed the guardian not to spend more than Rs. 1,100 on the marriage of Gauripat Rai, the first respondent, for the expenses of which the loan was to be raised. The Court below has found that the plaintiff actually paid Rs. 1,400 on account of the first bond. As for the second bond, it was represented to the Judge that Rs. 1,887 were required for redeeming certain ornaments which had been pawned with one Kali Charan. The learned Judge sanctioned the raising of that loan, and the ornaments are said to have been redeemed. The Court below allowed to the plaintiffs interest at the rate of 12 per cent. per annum, which it considered to be reasonable, and reduced the contractual rate, on the ground that the District

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Judge in sanctioning the raising of the loans did not specify the rate of interest at which the loans were to be taken. The course adopted by the Court below is justified by the ruling of their Lordships of the Privy Council in *Ganga Pershad Sahu v. Maharani Bibi* (1).

We are of opinion that in all cases where sanction is given for the raising of loans on the security of the property of minors, it is the duty of the Judge granting sanction to specify in his order of sanction, not only the amount to be raised and the property to be mortgaged, but also the rate of interest or at least the maximum rate of interest at which the loans are to be raised. This was not done by the learned Judge in this case, and therefore the plaintiffs are only entitled to a reasonable rate of interest. We see no reason to differ from the opinion of the Court below that 12 per cent. per annum was a reasonable rate in the present case. This is the only question raised in the appeal of the plaintiffs. The appeal must therefore fail, and we accordingly dismiss it.

The respondents have preferred objections under section 561 of the Code of Civil Procedure to the effect that the Court below should not have allowed to the plaintiffs a decree for Rs. 300 out of the amount of the first bond and for Rs. 400 out of the amount of the second bond. It is alleged on their behalf that these amounts were not actually paid. The evidence on the point is not satisfactory. On the contrary, as the Court below finds, the account books of the plaintiffs and the evidence adduced on their behalf prove the payment of the full amounts of the two bonds. As for Rs. 300 out of the amount of the first bond which exceeded the amount which the District Judge had authorized the guardian to spend on the marriage of one of the minors, we think, having regard to the form of the order made, that the creditor is entitled to recover what he actually paid. As we have said above, the Court below has found that the amount of the first bond was actually paid by the plaintiffs, and we see no reason to come to a different conclusion. We accordingly dismiss the objections also. The appellants will pay the costs of the appeal and the respondents the costs of the objections.

*Appeal dismissed.*