

mere communings, which could only show what parties meant to do but cannot show what they did. It would be *otiose* to set forth at length the authorities, but reference may be made to the dictum of Baron Parke in *Shore v. Wilson* (1); *Smith v. Doe d. Jersey* (2); *Prison Commissioners v. Clerk of the Peace for Middlesex* (3), per Sir G. JESSEL and *Lee v. Alexander* (4) in which . . . Lord SELBORNE states the proposition as a general one." We therefore, reject the third point also.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and
Mr. Justice Bisheshwar Nath Srivastava.*

THAKUR MATA BAKHSH SINGH AND ANOTHER (DEFENDANTS-APPELLANTS) *v.* MUSAMMAT THAKURAIN PATRAJ KUNWAR, PLAINTIFF, AND OTHERS (DEFENDANTS-RESPONDENTS).*

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November, 4.

Guardian and minor—Guardian raising loan on security of infant's estate by order of court—Sanction of court both for principal and rate of interest—Minor, whether can challenge the mortgage.

Where the guardian of a minor obtained an order of the District Judge authorizing him to raise a loan on the security of the infant's estate and he did so, the lender of the money is entitled to trust to that order and he is not bound to inquire as to the expediency or necessity of the loan for the benefit of the infant's estate unless fraud or underhand dealings are brought home to him and the District Judge

*First Civil Appeal No. 15 of 1929, against the decree of Babu Gauri Shankar Varma, Additional Subordinate Judge of Bahraich, dated the 19th of October, 1928, decreeing the plaintiff's claim.

(1) (1842) 9 Cl. & F. 355, 555.

(2) (1821) 2 Brod. & B. 473.

(3) (1882) 9 Q. B. D., 506(511).

(4) (1838) 8 App. Cas. 853, 868.

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having sanctioned both the amount of principal and interest it is not open to the infant to challenge either the principal mortgage money or the rate of interest. *Ganga Prasad Sahu v. Maharani Bibi* (1) followed.

Mr. K. P. *Misra* for the appellants.

Messrs. *M. Wasim* and *Khaliq-uz-zaman* for the respondents.

STUART, C. J. and SRIVASTAVA, J. :—This is an appeal by Mata Bakhsh Singh aged twenty-four, and Sant Bakhsh Singh aged sixteen under the guardianship of Thakur Mata Bakhsh Singh against a decision of the learned Additional Subordinate Judge of Gonda decreeing the plaintiff-respondent's claim upon the basis of a deed of mortgage dated the 5th of April, 1913, executed by Thakurain Bhagwant Kuar the mother of the two appellants, who were then minors, transferring the minors' estate. The deed in question was executed with the express sanction of the District Judge of Gonda. Thakurain Bhagwant Kuar was the certificated guardian of her minor sons, who were wards of the court. She could not legally alienate any of their property without the express permission of the court, but she obtained this permission and the deed in question was executed with the express permission of the court.

The amount of Rs. 7,000 consideration was paid in cash. The rate of interest was further sanctioned by the court. The consideration was devoted almost entirely to the payment of the debts due from the minors' estate, a small balance of less than Rs. 100 being retained for necessary household expenses. The defence in the lower court was that the plaintiff-respondent had failed to prove that the debts paid actually bound the defendants-appellants. We are of opinion that the evidence upon the record sufficiently established that all the debts paid actually bound

the minors' estate. But we agree with the finding of the learned trial Judge which decreed the suit not only for this reason. Here we have a case where there is an order of a court authorising the guardian of the infants to raise a loan on the security of the infants' estate. In *Ganga Prasad Sahu v. Maharani Bibi* (1) their Lordships decided that in these circumstances the lender of the money is entitled to trust to that order, and that he is not bound to inquire as to the expediency or necessity of the loan for the benefit of the infant's estate. The case would be altered if fraud or underhand dealing were brought home to him but here there was not a suggestion of fraud or underhand dealing and the decision of their Lordships to the effect that it is sufficient for the plaintiff to say "I have got the order of the court" affects here not only the question of principal but also the question of interest. In the case before their Lordships the District Judge had sanctioned a loan for the principal, and his order had not sanctioned any particular rate of interest, and in those circumstances their Lordships agreed that it was open to the infant to challenge the rate of interest, and in the end reduced the rate of interest to a rate lower than that allowed by the deed. But here not only did the District Judge sanction the amount of principal but also sanctioned the amount of interest, and the lender having obtained this sanction in respect of both principal and interest can meet the case on the simple assertion that the order of the court had been obtained both as to principal and interest. In these circumstances the appeal fails and is dismissed with costs.

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Appeal dismissed.

(1) (1884) L. R., 12 I. A., 47 (50).