(18th of June 1813), and considered it just that the payment of the money due to the plaintiffs, under the first mortgage bond, should precede the payment of the money due to Baboo Mukund Lal, under the *ikrarnama* executed on the 5th of December 1800, by Raja Run Buhadoor, in lieu of security; and that after **[21]** the sum due on that *ikrarnama* was paid, the sum due under the second bond should be liquidated. The Court therefore ordered that the plaintiffs should first receive from the *jageer* of the Raja the sum of 24,170 rupees, being the sum due under the first bond executed in their favour; that Baboo Mukund Lal should receive the whole of the money due to him under the *ikrarnama*; after which the plaintiff should receive the balance of 56,586 rupees, 12 anas, 3 gundas, 2 cowries.

Baboo Mukund Lal demised, after having preferred an appeal from this decision, against Raja Run Buhadoor and the other respondents, the heirs of the original plaintiffs, who also had died; and was succeeded by the present appellant, his son and heir. The appellant stated, that the original plaintiffs were servants of the Raja, and that the two mortgages executed by him were not *bona fide* transactions; and that this suit had been instituted by them, with the consent of the Raja, with a view to defraud him of the sum due to him under a decree of the Sudder Dewanny Adawlut; which he pleaded should have the preference to any other claim. He therefore prayed that the Raja might be compelled to pay him the full amount due to him under the above decree, before the sums declared to be due to the heirs of the original plaintiffs were paid.

The respondents having failed to appear to defend the case, the appeal was decided *ex parte*. The Court (present C. Smith and W. B. Martin) on consideration of all the circumstances of the case, were of opinion that the Provincial Court of Benares were not authorized, four years after the passing of a decision of the Sudder Dewanny Adawlut, to give to any document filed by the plaintiffs a preference to such decree, and that the appellant was entitled to receive every rupee which was due to him under that decree, before the heirs of the original plaintiffs received any part of their debt. They therefore amended their decision of the Provincial Court, and ordered that the appellant should first receive the sum due under the former decision, passed in favour of his father, from the proceeds of the Raja's *jageer*, and that the heirs of the original plaintiffs should then receive the sum decreed to them by the Provincial Court.

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[22] BABOO RAM GHOSE, *Appellant v.* KALEE PERSHAD GHOSE (FOR HIMSELF AND HIS MINOR SON BISHUMBER GHOSE), AND DEB NATH GHOSE, *Respondents.* (1825. *Feb. 9th.*)

Claim by appellant to recover a sum of money on a bond. The bond being given in lieu of principal and interest due on two former bonds, which were executed in favour of the plaintiff, while he was acting as *Mokhtar* and guardian of the parties bound by them, and the third bond being also executed under similar circumstances, the Court rejected his claim.

BABOO RAM GHOSE instituted this action on the 25th of November 1818, in the Provincial Court of Calcutta, to recover from the respondents the sum of 10,241 rupees, 8 anas, 11 gundas, being the principal and interest due on a *kistbundee*, or bond payable by instalments. He stated, in his petition of plaint, that the sum of 5,825 rupees, was due to him under two bonds executed by Gouree Churn Ghose, the father of Kalee Pershad Ghose, and Deb Nath Ghose, and Ram Rutton Ghose, deceased, in the years 1207 and 1208, B.S.; that the principal and interest of that debt in the year 1219, B. S., having amounted to 11,650 rupees, Kalee Pershad Ghose, Ram Ruttun Ghose, and Deb Nath Ghose, paid to him in cash the sum of 525 rupees, but being unable to pay the balance at one instalment, they, on the 3rd of *Bhadoon* 1219, B. S., entered into a *kistbundee* or bond, promising to pay the balance 11,125 rupees, with interest at the rate of 12 *per cent. per annum*, at several instalments, by the month of *Chyt* 1222, B. S.; that they had paid him a portion of the debt, but refused to pay the balance which, with interest up to the month of *Kartick* 1225, B. S., amounted to the sum claimed. He therefore instituted this action to recover the said sum from Kalee Pershad Ghose and Deb Nath Ghose, who signed the bond on their own behalf, and from Bishumber Ghose (the minor son of Kalee Pershad Ghose through his father and guardian), and the aforesaid Deb Nath Ghose, the donees and occupants of the property of Ram Ruttun Ghose, who demised in 1223, B. S., after having made over to them the whole of his property by a deed of gift.

Kalee Pershad Ghose for himself and his son, and Deb Nath Ghose for himself, denied that they and Ram Ruttun Ghose had either executed the bond pleaded by the plaintiff in 1219, B. S., or that they had ever paid him any sums on such a bond : declaring that their father Gouree Churn Ghose being affected **[23]** with the palsy, and deprived of his senses in 1207, B. S., died in that year, when the plaintiff was appointed their guardian, and had the sole control of their affairs, and had never given any account of his guardianship up to the date of their answer, and that he, hearing that they had it in contemplation to institute a suit against him to compel him to render an account of their property, had instituted the present action to forestall their claim ; they also pleaded, that though Kalee Pershad Ghose had come of age in 1219, B. S., the plaintiff had still the management of the concerns of the family, and he was totally unacquainted with the state of his affairs ; and that therefore if the plaintiff had taken advantage of their ignorance to make him and his two brothers, who were still minors, sign any bond, it could not be held valid in a Court of Justice.

The plaintiff in his rejoinder declared that Gouree Churn Ghose executed the first bond before his death, in 1207, B. S., and that his widow Mussummaut Sunkuree Dossee, the mother of the defendants, and Ram Ruttun Ghose deceased, borrowed the money on the second bond in 1208, B. S., and signed it in her own name, on behalf of her sons, and that he, having been removed from the guardianship in 1216, B. S., the defendants held the sole control of their affairs from 1217, B. S.

The defendants in reply denied that the plaintiff had been removed from

the guardianship in 1216, B. S., and challenged him to produce any *faraghuttee* or other document to prove that he had settled the accounts of his guardianship. They pleaded that the original bond of 1208, B. S., could not be considered as binding on them, even if executed, as their mother had no authority to execute any deed on their behalf while they were under the guardianship of the plaintiff.

The Senior Judge of the Provincial Court of Calcutta, on perusal of the pleadings and documents filed by the parties in proof of their respective claims, came to the following decision. He observed, that it appeared from the evidence that Gouree Churn Ghose executed a *Mokhtarnama* on the 14th of *Aghun* 1206, B. S. (27th of November A. D. 1799), whereby he appointed the plaintiff the *mokhtar* or manager of all his affairs, and that after the death of Gouree Churn Ghose aforesaid, the plaintiff was, on the strength of the *Mokhtarnama* aforesaid, appointed guardian of the children of the deceased, under a *sunnud* issued to him by **[24]** the Judge, dated the 8th of August, A. D. 1801 (25th *Sawun* 1208, B. S.), and that though the minority of Kalee Pershad, one of the defendants, expired in 1219, B. S., it did not appear that the plaintiff had ever rendered any account of his trust, or that he had been exonerated from the charge. The plaintiff was unable to produce any accounts to prove that any transactions regarding money had ever taken place between him and the father of the defendants. As therefore the plaintiff had the management of the concerns of the family of the defendants from 1206, B. S., to the alleged time of executing the bond, which formed the ground of the present action, the Senior Judge considered the bond said to have been executed in 1207, B. S., invalid, from the fact of the plaintiff having the sole control of the affairs of Gouree Churn, the alleged writer thereof. The bond of 1208, B. S., he also declared could not be held as binding on the defendants, as their mother had no authority to execute it on their behalf. These bonds therefore being held to be invalid and the plaintiff being unable to produce accounts to shew that the debt specified in them had ever been incurred by the defendants or their father, formed sufficient grounds, he thought for exempting the defendants from responsibility under the bond said to have been executed by them in 1219, B. S., independently of the strong presumption which existed that the plaintiff had taken advantage of his capacity of guardian to induce the defendant Kalee Pershad Ghose and Deb Nath Ghose, and their deceased brother Ram Ruttun Ghose, to put their names to the *Kistbundee*. He therefore passed a decision on the 11th of November 1812, dismissing the claim of the plaintiff with costs.

An appeal being preferred from this decision, by the plaintiffs, to the Sudder Dewanny Adawlut, the Court (present C. Smith) on consideration of the facts of the case, concurred in the reasons which guided the Senior Judge of the Provincial Court in dismissing the claim, and accordingly confirmed his decision, and dismissed the appeal with costs.