

*Judgment of the Lords of the Judicial Committee of the Privy Council on Petition to restore the Appeal of Ranee Birjobuttee and others v. Pertaub Sing, Government and others, from a Decree of the Sudder Dewanny Adawlut of Calcutta; delivered June 15, 1860.*

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Present :

LORD JUSTICE KNIGHT BRUCE.

SIR EDWARD RYAN.

LORD JUSTICE TURNER.

SIR JOHN T. COLERIDGE.

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SIR LAWRENCE PEEL.

SIR JAMES W. COLVILE.

THE decision proposed to be brought under appeal was ripe for appeal in the year 1856, if not in the year 1855, and the delay in various ways has been so considerable that, notwithstanding the state of India, especially that part of India where this matter arises, in and since the year 1857 it is probable, to say the least, that if Mr. Baboonan's personal interests had been alone concerned in this matter, the application now made would have been wholly unsuccessful. Their Lordships, however, cannot but give some degree of attention to the circumstance that there are infants concerned whose interests were confided to him. Now, their Lordships do not mean to go the length of saying that where infants are concerned any degree of delay may be considered justifiable or excusable, or such as may be passed over : there may be circumstances so strong as even to prevent infancy from being an apology or an excuse. Their Lordships, however, after much consideration, do not view the present case in that light, and considering the apology or excuse of infancy, and considering the manner in

which the interests of minors are involved, and the state in which the part of India from whence the case comes was, in and after the year 1857, their Lordships are of opinion that on certain terms this application may be acceded to.

The Applicant, their Lordships think, must pay the costs of the present application. The Applicant, their Lordships think, must find security, that is, find a deposit to the amount of 600*l.*, to be made on or before the 1st December next, and he must undertake to have the appeal set down so as to be in their Lordships' list for hearing at the sittings after Hilary Term next.

*Mr. Rolt.*—That will enable us to communicate with India.

*Lord Justice Knight Bruce.*—One of their Lordships' reasons in thus deciding has been that the security in India is gone by the dismissal of the appeal. Security was given, I think, to the amount of 4,000 rupees in India; that is gone: therefore if that money were deposited, you would be able to get it back.

*Mr. Rolt.*—I was not aware that it would have actually gone by the dismissal of the appeal.

*Lord Justice Knight Bruce.*—Upon that footing we fix the amount of 600*l.* on the hypothesis that that security is gone, and that you will obtain it back.

*Mr. Rolt.*—If that security stands, it would be 200*l.* in addition: that would answer your Lordships' purpose.

*Lord Justice Knight Bruce.*—That, I suppose, would be so, if that security stands; but we do not think it can stand.

*Lord Justice Turner.*—I do not see how it can stand.

*Lord Justice Knight Bruce.*—The authorities in India may be informed that we proceed upon the hypothesis that you will be entitled to have that money back.

*Mr. Rolt.*—Yes. I am much obliged to your Lordships.

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