Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Chetty Colum Coomara Vencatachella Reddyar v. *Rajah Rungasawny Jyengar Bahadoor, from the Sudder Dewanny Adawlut of Madras; delivered on the* 13*th March*, 1861.

Present:

LORD KINGSDOWN.
JUDGE OF THE ADMIRALTY COURT.
SIR EDWARD RYAN.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

IN this case an action was brought by the Respondent against the Appellant, upon a bond for 17,000 rupees, dated the 27th August, 1841.

The Respondent obtained judgment for the amount of the bond, with interest, in the Civil Court of Trichinopoly on the 10th March, 1857.

This Judgment was affirmed on appeal by the Sudder Adawlut on the 5th May, 1858, the Judges being unanimous.

From this Decree the present appeal is brought.

The Appellant is the adopted son of the late Zemindar of Torriore. He was adopted by the widow of the Zemindar after his death; and he is in possession of the Zemindary.

It appears that the widow, after the adoption of the Appellant, and during his minority, remained in possession of the Zemindary.

The death of the Zemindar took place in 1835. The lady seems, some years after the adoption, to have repented of what she had done, to have endeavoured to repudiate the act, and to have insisted on retaining the possession of the estate against the adopted son after he came of age. In fact, she continued in possession till July 1851.

While she was so in possession, and on the 27th August, 1841, she executed the bond in question for 17,000 rupees to Rungasawny Jyengar, the natural father of the Respondent.

That this sum was advanced by Jyengar is not disputed, but it is said that it was advanced on the personal security of the widow; that the bond did not purport to bind the Zemindary, and that the widow had no power to bind it; that the Appellant at that time had attained his majority, and that the widow was holding possession adversely to him, and could not, therefore, as guardian or manager of the estate, charge it with any debt which she might contract.

On the other hand, it is said that the amount of the bond consisted in part of the balance due on a bond executed to the same creditor by the late Zemindar himself, the husband of the obligor, in his life-time, and that as to the remainder, the money was raised to pay other debts of the Zemindary, binding the Zemindar; that the bond therefore constituted a charge on the Zemindary, which the Appellant, as the owner, was liable to pay, and that he had in fact acknowledged his liability to do so after he came of age, both verbally and by a letter written in the year 1845, long after he had obtained his majority.

The bond is set out on page 11 of the Appendix and purports to be made on the settlement of an account between the widow and Jyengar, and to be given for moneys partly due from the late Zemindar, and partly advanced to the widow herself.

The consideration for it is stated to be,—

1.	A balance due on a bond from the late Zemindar, dated in July, 1832-33..	8,700 rupees
2.	A balance due on a bond executed by the widow herself on the 27th May, 1840	3,445 „
3.	Cash received by the widow, through Pillay, her agent, on the 19th August, 1841	3,031½ „
4.	Cash received on the execution of the bond..	2,000 „
	Total	17,176½ „

from which the sum of 176½ being relinquished by the obligee, there remain 17,000.

The bond proceeds :—

"This being the amount of debts incurred by my husband and myself, I shall pay the same, with interest at 1 per cent. per mensem, by yearly instalment of 2,000 rupees, payable in cash, from this year, and enter such payment at the foot of the bond."

The bond itself purports to bind nobody but the widow, and the statement of the account could not of course bind the Appellant, who was no party to the instrument. On the other hand, it is plain that, from the contents of the bond itself, the Appellant, if he saw it, would know for what causes it purported to have been given. But it consisted partly of moneys alleged to be due from his father, and partly of moneys admitted to have been advanced to the widow personally.

Unless those moneys so advanced to the widow personally were advanced to pay subsisting charges on the estate or otherwise, for its advantage, they of course could constitute no charge on the Zemindary.

There is produced in evidence, and proved, a bond from the late Zemindar, dated in 1832, for 5,000 rupees, bearing interest at 12 per cent., on which, after deducting the sums appearing by the bond to have been paid, there would remain due for principal and interest, a sum exceeding the 8,700 rupees, stated in the bond for 17,000 rupees.

This bond of 1832 is proved to have been produced at the time when the bond in dispute was executed, and the amount settled of the sum due to Jyengar.

With respect to the sums advanced to the widow, their payment is regularly proved, and, indeed, that the transaction as between the lender of the money and the widow was a fair one is not in dispute.

As to the purpose for which these advances were made, it is sworn that the widow told the lender that she wanted money to discharge debts contracted by her husband with two persons named, and to pay maintenance to the widow of her husband's elder brother.

The fact that the money was required, and was advanced for these purposes, is stated by another witness who had been in the service of the late Zemindar and also of the widow, and who had

been acquainted with the circumstances as they occurred.

The same fact is sworn to by other witnesses.

With respect to the evidence generally, it appears to their Lordships to be less open to suspicion than usually happens in appeals from India.

At the time when the debts were contracted for which the bond for 17,000 rupees was executed, and at the time of the execution of the bond, the widow was in possession of the Zemindary, and the Appellant was living there under her protection.

It is said that the Appellant had before this time attained the age of sixteen years—his legal majority — and that he was entitled to the estate and was wrongfully kept out of it by the widow.

It is not very distinctly proved at what time the Appellant attained his majority. That disputes did take place between the widow and the Appellant with respect to the right of possession of the Zemindary sufficiently appears, but the period at which they commenced is not in evidence. The important matter is free from doubt, that during the period of these transactions and subsequently, and up to the time when the letter of the Appellant, to be presently referred to, was written, the Appellant was living on the Zemindary, and had therefore probably full means of ascertaining the real truth of the case with respect to these advances.

In this state of circumstances what took place is quite natural. The Appellant was the adopted son of the late Zemindar, entitled as it seems to the Zemindary; he was living there, and had attained his majority, and might reasonably be supposed to be in the enjoyment of the revenues.

Accordingly the Plaintiff, who considered that the money due to him was a charge upon the estate, applied to the Appellant for payment of the amount due on the bond.

It is stated by one of the witnesses (19) "that the Plaintiff sent him to the Defendant to demand of him the said sum, and when he went to Torriore and asked the Defendant he said, 'I and my mother are at variance, and I can pay the debt only after we come to some settlement.'" The witness then says that he went to the widow and asked her,

and she sent by her servant Jamboovien 1,000 rupees.

There is nothing improbable in this account. The witness says it happened about fourteen years ago. He was examined in August 1856, and on referring to the bond it appears that 1,000 rupees were paid in May 1842.

This statement is confirmed by another witness at page 24, and other applications to the Appellant, and similar answers by him, are sworn to by other witnesses.

Nothing is more likely, therefore, than the account which is given in the evidence that, in 1845, 1,000 rupees only having been paid in respect of the bond, a written demand of payment should be made on the Appellant, and that he should make in writing an answer to the same effect with that which he had given verbally on several previous occasions. A letter is accordingly produced and proved, dated the 11th March, 1845, with the signature of the Appellant, which contains a distinct recognition of the Plaintiff's demand and the same excuse for non-payment which he had previously offered, viz., that his mother was still in possession of the Zemindary, that the dispute between them was not settled, and that he had, therefore, no power to discharge the debt. He then distinctly states that on inquiry he finds that the bond which the Plaintiff holds is genuine.

Now, it is said that this letter is a forgery, but there does not appear to their Lordships to be any evidence whatever to support the charge, nor any the least improbability in such a letter, under the circumstances, having been written.

The inference drawn from the evidence in both the Zillah Court and the Sudder Adawlut has been that this bond was given for debts which the Defendant, as owner of the Zemindary, might be liable to pay, and that by his own acts he has admitted that he actually was liable to the payment, and their Lordships entertain no doubt that this is the right conclusion.

It is unnecessary, under these circumstances, to allude to the law upon these subjects as laid down by this Board on the case in the 6 Moore, Ind. Ap., 393, with respect to the power of the manager of an estate on the part of an infant to charge it, for

no question of law arises in this case when the facts are understood.

Their Lordships will have no hesitation in advising Her Majesty to affirm the Decree complained of, with costs.

An objection was taken as to the Plaintiff's right to sue on the bond, but that objection was sufficiently answered by the Respondent's counsel at the hearing.