Judgment of the Judicial Committee of the Privy Council on the Appeal of Muhunt Jyram Gir v. Ranee Sheoraj Koer and others, from the late Sudder Dewanny Adawlut at Agra, North-West Province of Bengal; delivered 10th March, 1869.

Present:

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
LORD JUSTICE SELWYN.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

IN this case the Plaint is brought against the Ranees or the wives of the late Rajah Chuttpal Singh, and also against the minor son and heir of the said Rajah, who is made a party to the suit. The Plaint expressly states that the claim is founded or based upon the bond which is therein mentioned. We may therefore consider the case under two aspects,—first, as against the Ranees, and secondly, as against the son or infant heir of the Rajah.

First, then, with respect to the claim as made against the Ranees. The Plaint states expressly that the debt was a debt due from the Rajah himself, consequently that it was not a debt due from the Ranees but from the Rajah himself. Therefore, the claim against the Ranees must be considered as in the nature of a claim against sureties. Now, the bond on the face of it is inconsistent with such a case. The bond, which is expressed to be made by the Ranees, begins by declaring that, the Rajah having had monetary dealings with Gir, the banker, the proprietor of the firm which is there mentioned, "we," that is, the Ranees, "also entered into "similar dealings with the firm of the said Muhunt; "that the whole of the principal debt and interest, "consisting of certain unpaid items of previous

"dealings, and the loan we took on the occasions of "the marriage and the 'Mooklawa' ceremony of the "Bebee Sahibah, having been balanced, the sum of "Rs. 16,960 : 10 : 6 has been found due by us up "to the present date; that we are at present unable "to pay up the said sum, in consequence of our "estates being under the management of the Go-"vernment, along with those of the Rajah, for the "liquidation of the debts of the bankers." This bond therefore commences with stating that there had been transactions between the bankers and the Rajah, and that the Ranees had similar dealings, drawing therefore a distinction between the dealings of the bankers with the Rajah, on the one hand, and dealings of the same bankers with the Ranees, on the other hand. It also draws a distinction between the estates of the Ranees and the estate of the Rajah. Therefore it appears to their Lordships that upon the construction of this bond it cannot be successfully contended that where the words "we" or "us" are used, those words must be considered as including the Ranees and the Rajah, because there is throughout the bond the distinction drawn between the dealings of the Rajah and the dealings of the Ranees, between the Ranees personally and the Rajah, and between the estates of the Ranees and the estate of the Rajah.

Then treating it as a claim made against the Ranees in the nature of a claim against sureties, the evidence does not show, but, so far as it goes, tends to disprove that they were informed of the circumstances attending the debt, which is alleged in the Plaint as being the Rajah's debt, or that they were informed of the transactions before the collectors, which raised a question as to the continued existence of the alleged debt. All that the evidence shows is, that this bond was taken into the zenanah, and was brought out again, executed, or stated to have been executed by them.

Under these circumstances, their Lordships are of opinion that this claim, in the nature of a claim against sureties, cannot be established against the Ranees.

It remains to consider the second question, as to the liability of the infant heir, the son of the Rajah. Now the Plaint is expressly based upon the bond; but there is no evidence of the particular debt men-

tioned in the bond which is a debt mentioned as being owing from the Ranees. There is an account produced, but that account does not tally with the sum mentioned in the bond as being due; and it is clear that there was another account which is not produced or proved, and which might have disclosed the fact of the payment made by the Collector. The only debt which is proved to have existed is that which was the subject of the adjustment before the Collector. The Judge of the Zillah Court proceeded upon the footing of the fact of the adjustment before the Collector having been established in evidence; and the memorandum of Regular Appeal does not dispute that such an adjustment had been proved, but virtually admits that some adjustment had taken place. The evidence of Meer Mookarim Ali proves that the debt in question was for the balance, after deducting the composition; and if his evidence is to be excluded, or considered as untrustworthy, then there is no evidence to prove the debt alleged in the Plaint.

In the opinion of their Lordships it is established by the whole of the evidence, including the documentary evidence in this case, that such an adjustment did take place, and that by virtue of that adjustment the Appellant obtained and received payment of a sum of money from the Collector, who, in the exercise of a public duty, was *de facto* in possession of the Rajah's property for the benefit of his creditors, and that that sum was so obtained and received by the Appellant upon the faith of the representation made by him to the Collector, that his debt was satisfied, or that he would accept the sum that was then paid in satisfaction of the debt owing to him. We are of opinion that the Appellant cannot be heard in a Court of Justice to contradict that representation, or to sue upon a debt or contract having such an origin.

Their Lordships therefore think that the decrees in question ought to be affirmed, and we shall humbly advise her Majesty to dismiss this Appeal.