

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Unnoda Dabee v. Maria Louisa Stevenson
from the High Court of Judicature at Fort
William in Bengal; delivered July 3rd,
1874.*

Present :

SIR JAMES W. COLVILLE.

SIR MONTAGUE F. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships think that they ought not to disturb the decree of the High Court which was made upon a review of the judgment of the Sudder Adawlut. The suit was brought by the present Appellant, who was the representative of a vendor of a putnee talook which had been purchased by Mr. Henry Gloucester French, as he represented, on behalf of his minor daughter, Miss Maria Louisa French. The suit was brought against Mr. French personally and as the guardian of his daughter. It appears that upon the purchase of the estate, which was sold for the sum of Rs. 26,625, a sum of Rs. 8,000, part of it, remained unpaid; and Mr. French gave a mortgage bond, or what is called a tummasook, to secure this money, and the suit was brought upon that bond. The conclusion of the suit is this,—after stating the circumstances of the purchase of the bond:—“It
“ therefore becomes necessary to sue him in the
“ above sum in his own name and as guardian of
“ his daughter. This suit is instituted against
“ Mr. French himself and as guardian of Miss

“ Maria Louisa French, a minor ; and I pray that
“ summons be directed to the Defendants afore-
“ said, as usual ; and that on hearing my evidence
“ in proof of my claim, it may be ordered that
“ the Defendants be directed to pay me the
“ amount of my claim, with interest and Court
“ costs.” There is nothing in that prayer which
seeks to affect the estate. It is a prayer that the
Defendants may be ordered to pay the amount of
the claim. The case was heard before the Principal
Sudder Ameen, who found these to be the facts :—
“ It does not appear from the tenor, or the part
“ signed, of the ikrar on which the present suit
“ has been brought by the Plaintiff, that Mr.
“ French has given and signed the ikrar as
“ guardian or executor of the minor Miss Maria
“ Louisa French. He has not signed the ikrar as
“ guardian and executor of the said Miss Maria
“ Louisa French ; he has signed for himself.
“ It has been clearly mentioned in the ikrar that
“ the Defendant Mr. French had obtained the
“ putnee tenure for the said minor. The name
“ of the said minor was used in this affair only
“ by the Defendant, Mr. French. In every
“ respect the Defendant, Mr. French, appears
“ to be responsible.” He goes on :—“ Such being
“ the case, the said minor can by no means be
“ responsible.” Then the order is, “that the
“ case be decreed, that the Defendant Mr.
“ French pay to the Plaintiff the amount
“ claimed, viz., Rs. 12,276, together with interest
“ on the principal,” and so on. There is there-
fore a finding, the question apparently having been
raised, that Mr. French alone is liable upon that
instrument, and an order upon him alone for the
payment of the money. The Plaintiff, whom the
present Appellant represents, seems to have been
perfectly contented with that decree. He did
not appeal, but Mr. French appealed upon the
ground that he ought not to have been made

solely responsible for this amount, and that his daughter ought to have been joined in the decree. That ground of appeal was in the teeth of his own assertion in the pleadings in the Court below that he was alone liable for this debt; and an effort was made by him to get rid of that pleading, but the Court apparently did not grant his request, and at all events that pleading stood; and so the case came before the Sudder Court. On the pleadings as they stood, and which were not amended, it would have been impossible for that Court to have altered the decree as Mr. French desired; and they did not do it; but it seems that Mr. French proposed to the Plaintiff a compromise of the appeal, which the Appellant acquiesced in. That compromise is stated in the judgment, founded on the compromise, of the Sudder Court. They state, " Mr. French has appealed; and his pleader, " after submitting some pleas and objections " which were not found to be included in his " written grounds of appeal, confined his " appeal to the point that as the debt was " obviously contracted by Mr. French for the " purchase of a putnee exclusively intended for " the use and benefit of his minor daughter, and " for the security of which debt the half share " of the putnee was specially pledged, that the " decree be allowed to declare the liability of the " property so pledged in the first instance, and " the decree holder be permitted to proceed " against Mr. French only for such balance of " the decree as may not be satisfied by the sale " of the property pledged. As the pleader on " the other side signifies to the Court that he " should be satisfied if the Lower Court's decree " be to this extent amended, it is therefore " ordered that the amount decreed by the " Principal Sudder Ameen be confirmed; but " with reference to the above arrangement, the

' decree holder will first proceed to satisfy this
" decree by sale of the property pledged, so far
" as that property may be liable under the
" terms of the bond executed by Mr. French as
" wolee or woosee of his daughter, and any
" balance still remaining with them be levied
" from Mr. French unreservedly, until the whole
" amount of the decree be realized." The com-
promise may have been proper, and if all the
facts could be assumed as Mr. Kay supposes
them to exist, there may have been no objection
to such an arrangement; but the vice of the
arrangement is that it was made without the party
who is principally affected by it being sufficiently
represented. The appeal to the Sudder Court
was really an appeal by Mr. French against his
Co-defendant, his own daughter; and she not
being in any way represented before the Court
but by himself, he comes to this compromise
and gets the assent of the Plaintiff to it.
It is plain that the Court exercised no con-
trolling power over it; that they did not consider
that they were looking after the interests of
the infant, but they base their decree simply
upon this compromise. It does not appear
what was done for 10 years after this decree;
but upon the daughter attaining her majority
and being married, she and her husband applied
to the High Court for a review of this decision,
which the High Court had power to re-hear,
as the Sudder Court, if it had existed, might
itself have done. Upon the re-hearing, the
objections to which allusion has just been made
were pointed out in the judgment of the High
Court. The learned Chief Justice went very
fully into the case and came to the conclusion
that the appeal to the Sudder Court was not
made by the Plaintiff, but by Mr. French
himself, and that he had obtained an alteration
of the decree in his own favour to the prejudice

of his daughter. The High Court thought that in a suit commenced as this had been, and with the pleadings of Mr. French standing as they did upon this record, they had not materials for going into the merits of the case to see what were really the rights between Mr. French and his daughter. Their Lordships cannot say they were wrong. By reversing the former order of the Sudder Court, they left the Appellant exactly where he was after the judgment of the Principal Sudder Ameen, a judgment from which he did not appeal, and to which he must be again remitted. Whatever rights (if any) the Plaintiff may have against the estate or against the daughter he will not be precluded from asserting in a suit properly framed, because one of the grounds of this judgment is that this suit was framed merely on a money claim for the amount of the mortgage debt.

Their Lordships will therefore humbly advise Her Majesty that the order of the High Court be affirmed.

