

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Rai Balkrishna, son of Rai Narain Das, deceased, v. Masuma Bibi and others, (two Appeals consolidated,) from the High Court of Judicature, North-Western Provinces, Bengal; delivered July 6th, 1882.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

TWO suits have been here consolidated, brought by Rai Balkrishna against Mussumat Masuma Bibi, her daughter, her daughter's husband, and the Collector of Ghazipur on behalf of the Court of Wards.

The plaint in the first suit states that the claim is under a deed of mortgage executed on the 1st November 1872, by the Defendants 1, 2, and 3, that Rs. 67,000 were borrowed of one Bisheshur Pershad, and that as security for that amount the Defendants mortgaged a two annas share out of 16 annas of Taluqua Sunwani. It then states that the debt due to Bisheshur was purchased under a sale in execution of a decree by the Plaintiff, who obtained a sale certificate, and thereby stood in the place of Bisheshur, and "that inasmuch as the Sunwani estate " belonging to the Defendants is under the " superintendence of the Court of Wards, and " as the Collector of Ghazipur is the manager " thereof on behalf of the Court of Wards, the " Collector has also been made a Defendant." The Plaintiff prays judgment for the amount claimed.

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The plaint in the second suit is very similar. It is upon a mortgage bond for Rs. 39,900, executed, on the 7th March 1874, by the same persons, to Rai Narain Das himself. This plaint also contains a statement that the Sunwani estate is under the control of the Court of Wards; and that therefore the Collector, who was in the management of it, is made Defendant.

A written statement was put in on behalf of the Court of Wards in the first suit, which stated, "That Taluqua Sunwani is the sole and exclusive property of Masuma Bibi," which is now admitted; and that she was a ward of the Court, and had no power to convey any portion of her estate by way of mortgage, that the property against which the Plaintiff seeks to enforce his lien belongs to No. 1 only,—that is, Masuma Bibi,—not to the other Defendants; and that the debt sued for was not borrowed with the consent or knowledge of the Court of Wards.

The material issues framed are, "Who is the proprietor of Talooka Sunwani, and have Nawab Mohamed Hosein Khan and Mussumat Said-ul-nissa Begum any interest in this talooka or the properties in dispute?" It is found they had not. "Was the proprietor of or were the persons who may be found to possess an interest in the property in dispute, legally competent to convey that property by mortgage or sale while the estate was under the superintendence and management of the Court of Wards?" "Is the Plaintiff, as auction purchaser of the deed of mortgage, competent to sue? Was the deed executed with the knowledge and consent of the Court of Wards? If the deed is not valid, are Masuma Bibi, Said-ul-Nissa Begum, and Nawab Mahomed Hosein Khan, or any of them, liable for the amount claimed, or for any other amount?"

The first suit was decided on what may be called a technical point. On issue 4 it was held that the Plaintiff was not the auction purchaser of the deed of mortgage, and therefore could not sue; and the decision was therefore against him. The Judge appears also to have found the other issues very much as they were found in the other case.

With respect to the second suit the issues are very much the same, and the findings are in favour of the Defendants upon all the material issues. They are in their favour upon the issue that the Defendants, who may be reduced to one, — viz., Masuma Bibi, — were not competent to convey an interest in the property in dispute, and that the deeds sued upon were not known to the Court of Wards. Under these circumstances, in the second case, the Judge of the First Instance dismissed the suit as against the Collector of the Court of Wards and as against Masuma Bibi, but granted the relief claimed against the daughter and the son-in-law, who were not under the Court of Wards. These two judgments have been confirmed in every respect by the Court above, and the Appeals are from the judgments of that Court.

It has been contended on the part of the Plaintiffs in the first place that the estate in question, which seems to have been a large estate, was not properly put under the jurisdiction of the Court of Wards, so as to destroy the power which Masuma Bibi would have had of charging it; secondly, that even assuming that it was, still that the conduct of the Court of Wards has been such in allowing her and her son-in-law to manage the estate as to hold them out to the public and to creditors as capable of charging it.

It now becomes necessary to refer to some

of the provisions of Regulation 52 of 1803, by which the Court of Wards was established. By section 2, "The Board of Revenue is hereby constituted a Court of Wards for the superintendence of the persons and estates of zemindars and other actual proprietors of land paying revenue to Government who are or may be disqualified for the management of their own lands, in consequence of their coming under any of the descriptions of disqualified landholders specified in section 3 of this regulation." Those disqualified landholders are in the first place females, who are treated as disqualified if so reported by the Board of Revenue, unless the Governor-General in Council declares them competent; and there is another class of disqualified landholders consisting of minors, idiots, lunatics, and persons of bad character. This Act provides in the first place only for the case of proprietors of lands paying revenue to the Government, but the seventh section goes further, and provides "that it shall be competent to the Governor-General in Council to commit to the charge of the Court of Wards any estate paying revenue to Government, being the sole property of any disqualified person or of any two or more persons, both or all of whom may be disqualified, although the same shall not have descended to such person or persons in the regular course of inheritance;" and then it goes on to say—"and also any lakheraj lands belonging to such proprietor or proprietors, whenever the same shall appear to him for the interests of Government and the proprietor or proprietors," and so on. There are further provisions with respect to reports to be made to the Government, the appointment of a manager, and a number of details as to the duties of that manager, and the staff of assistants which he shall have, and so forth.

Then by section 19 it is stated that the manager shall have "the exclusive charge of all lands, " malguzarry or lakheraje, as well as of all houses, " tenements, goods, money, and moveables of " whatever nature belonging to the proprietor " whose estate may be committed to his charge, " excepting only the house wherein such pro- " prietor may reside, the moveables wanted " for his or her use, and the money allowed " for the support of the proprietor," &c. So that according to the provisions of this section if the Governor-General in Council, or the Lieutenant-Governor who now exercises his powers, is of opinion that it would be for the benefit of the public or the estate to include any lakheraj lands under the management of the Court of Wards, he may do so; and then the whole estate and effects, real and personal, of the proprietor are vested in the Court of Wards.

Undoubtedly, the evidence in this case is somewhat meagre and unsatisfactory as to the proceedings of the Court of Wards, both as to the circumstances under which they took possession of the estate and their dealings with it afterwards. What evidence there is consists mainly of what will be now referred to. It appears that on the 8th of October 1868 the Collector of Ghazipur wrote a letter to the Commissioner of Benares, with a view, no doubt, of its being transmitted to the Board of Revenue, to this effect:—"I have the honour " to request that you will obtain the sanction of " the Board of Revenue to my placing the " estates of Masuma Begum and Mussumat " Saed-un-nissa Begum (that is, the mother and " the daughter) under the Court of Wards." " These estates are held rent-free; they were " granted on the usual fees to Murshi Shariyat- " ul-lah Khan in A.D. 1784, for good services

" rendered by him, and have been in his family
 " ever since. Lately, owing to the estates being
 " in the hands of women, they have fallen into
 " great disorder, large debts have accrued,
 " and unless some steps are taken this fine
 " property will, I fear, soon be split up and
 " come into the possession of outsiders." He
 recommends accordingly, with a view to the
 preservation of the property, that it shall be
 taken into the custody of the Court of Wards.
 The next document is one of the 24th February
 1869, in which the lady herself and her
 daughter pray that the estate may be put
 under the Court of Wards; and they make a
 proposal for the payment of some revenue
 to the Government with a view of authorising
 the Government to take that step. The next
 document is a letter, No. 1,107, of the 18th May
 1869, from Mr. Simson, secretary to the Govern-
 ment of the North-Western Provinces, to the
 secretary of the Board of Revenue, in which he
 says that he forwards an opinion of the Govern-
 ment Advocate on the proposal of the Board
 that the Sunwani taluqua in Parganah Balia
 Zillah Ghazipur, be placed under the manage-
 ment of the Court of Wards. Then he says:—
 " I am to observe that to receive a small
 " payment as land revenue simply for the
 " purpose of bringing the property within
 " Regulation 52 of 1803, is a proceeding to
 " which the Lieutenant-Governor would have
 " been unwilling to resort. But on a reference
 " to the agents of the family who are now at
 " Allahabad, it has been alleged by them that
 " the family are in possession of a small assessed
 " property. If this be the case, the Board are
 " authorised to assume the property Khalsa
 " and Jogeer under their control, as the Court of
 " Wards." The Government, therefore, put the
 construction upon the seventh section, which has

been before read, that if any part of the property pays Government revenue, then there is a power to include all the lakheraj property; and this letter includes an opinion from the Government Advocate very much to the same effect.

We are informed incidentally of what was done by a letter of the 22nd July 1875, from the secretary to the Government of the North-Western Provinces to the secretary of the Board of Revenue of the North-Western Provinces:—"In reply to your letter dated the 24th of June last, I am directed to say that the Board have correctly interpreted the grounds on which the Government in G.O. No. 1,107, dated the 18th May 1869"—which is the last letter referred to—"authorised the Board to assume charge of the Sunwani estate in the Ghazipur district as the Court of Wards, viz., on account of the incompetency of the proprietors to manage it." We have here, therefore, a statement that this estate was assumed on the ground of the incompetency of Masuma Bibi. Then the letter goes on to say:—"The orders as contained in Government Order No. 1,107, dated the 18th May 1869, were made subject to the condition that some portion of the estate was assessed to revenue. The same condition was subsequently referred to in Government Order No. 1,110,"—which we have not,—"dated the 20th May 1869. The Board, in their docket No. 894,"—which is not in the record,—"dated the 18th August 1869, reported that the condition required to make the orders of 20th May 1869 absolute was satisfied." Then it goes on to say:—"The proprietors are still deemed by the Government incompetent to manage their estate. The Board may therefore carry out their proposal to sell a portion of the taluqua to discharge the debts contracted." We have

from this letter information that the Government made some inquiries, and in the result were satisfied that Masuma Bibi had some rent-paying land, and if so, the condition under which they directed her estate to be put under the management of the Court of Wards was complied with; and further it is here stated that the estate was put under the management of the Court of Wards because she was incompetent, and that she was so considered up to that time, namely, 1875. Their Lordships understand that the whole of Masuma Bibi's property, including a house in Benares, was taken under the management of the Court of Wards.

That being so, this case is distinguishable from a case which has been quoted from the 11th volume of Moore's Indian Appeals, page 468, in which under certain circumstances it was held that, although an estate was actually in possession of the Court of Wards, still the lady to whom it belonged, Rutta Koer, might be capable of contracting debts. The ground on which this case was decided appears from what is said in the judgment delivered by Sir James Colvile at page 483 of the volume referred to: "The
 " evidence in this case not only fails to show
 " that the necessary reports of the Collector and
 " of the Board of Revenue were made; it also,
 " though not uniformly consistent, goes far to
 " negative any intention on the part of the
 " revenue authorities to treat Rutta Koer as a
 " disqualified proprietor or a person incompetent
 " to manage her affairs. It shows that when her
 " title was attacked in 1855 they declined to
 " act as a Court of Wards in its defence, but
 " left her to sue or be sued as a person *sui juris*,
 " on her own responsibility and at her own cost.
 " It further shows that in 1856, and in the very
 " month in which she is alleged to have executed
 " the bond, they had taken all the necessary

“ steps towards putting her into the full
 “ possession and enjoyment of the talook, as a
 “ proprietor competent to its management, on her
 “ entering into proper engagements for the
 “ payment of the Government revenue.” In
 that case the estate had been put under the
 Court of Wards in the lifetime of the sister
 who was incompetent. It had come by in-
 heritance to Rutta Koer, who, according to that
 part of the judgment which has been quoted,
 was not incompetent, and to whom the Board
 intended to transfer the estate, and would have
 done so but for the Mutiny. That case is
 altogether distinguishable from the present,
 where the Court of Wards did hold the lady to
 be incompetent; where, so far from leaving her
 to sue and to be sued, they now take her part
 and protect her; and further, where they have
 assumed the management and retain it to the
 present day, holding her to be incompetent.

It now remains to deal with what may be
 called the substantial case on the part of the
 Appellants. They say that, assuming that the
 estate was properly taken possession of by the
 Court of Wards under a proper power, still that
 the conduct of the Court of Wards when they
 had taken possession was such as to hold
 out Masuma Bibi to the world as capable of
 contracting, and that the Plaintiffs have been in-
 duced thereby to contract with her. It is said that
 the Court of Wards have not assumed possession
 of the property in the sense of taking the rents
 and profits at all, and that they have appointed no
 manager. Undoubtedly, as before observed, the
 evidence on these subjects is meagre, but their
 Lordships by no means infer that the lady or her
 son-in-law and daughter have remained in pos-
 session of the rents and profits all along; and
 with respect to a manager, whether or not a
 regular manager was appointed does not very

clearly appear, but in the statement of the plaintiff the estate is said to be under the management of the Court of Wards, and appears undoubtedly in fact to have been so.

The argument last adverted to appears to their Lordships not to have been set up in either of the Courts below. There is no issue addressed to it; the judgment of the Court below is not addressed to it; and even in the petition of appeal the point is not taken. There is indeed, in the second ground of appeal, this statement: "The manner, the object for which, and the state of things under which the estate was brought under the management of the Court of Wards did not prevent the owner or owners of the estate from raising debt by the hypothecation of the estate." That refers to the object and the state of things under which the estate was brought under the management of the Court of Wards; but it does not set up the case that the Court of Wards, after it was brought under their management, so conducted themselves as to render this lady competent. She having been incompetent when they took possession of the estate, could any conduct of theirs, in the first place, render her competent? in the second place, has their conduct been such that they are estopped, as it were, from disputing that she was competent? Those seem to be the questions. Assuming, however, that those questions, though not distinctly raised in the issues or in the judgments of the Court, or in the grounds of appeal, could now be gone into, their Lordships are of opinion, that, as a matter of fact, no such case is made out on the part of the Appellants. It does indeed appear that the Court of Wards allowed this lady and her daughter and son-in-law more freedom of action than probably they ought to have had or than was consistent

with the regulation which has been quoted. The circumstances under which they were permitted that liberty of action appear upon the record. In a petition of the 4th January 1872 by the son-in-law, who is called the Nawab of Sunwani, there is this statement: "The rent-free jagir of Taluku Sanwani has been, at our request, placed under the management of the Court of Wards. Mr. Nickels holds a conditional deed of sale of the said property, the term of which has expired on the 4th September 1871. As it is impossible to liquidate the debt without raising a fresh loan, which we have arranged for with certain bankers of Benares, who have already paid into the Bank of Bengal a sum more than covering the debt in question, we are therefore placed under the necessity of asking your written permission"—this is, of the Court of Wards—for contracting the mortgage loan, so that we may be enabled to complete the requisite transaction with the bankers, and the property be thereby saved from the liability of the deed of conditional sale. Petitioners pray for the issue of early orders, as they will be put to great expense for payment of interest pending receipt of permission." That petition is considered, and this Order is made: "Forward a copy of this letter to Masuma Begum, and request her to arrange that the money required for liquidation of the debt as claimed by Mr. Smythe, attorney for Nickels, may be at once deposited in the Bank of Bengal." It appears then that for the purpose of liquidating a debt of large amount to Mr. Nickels,—incurred antecedently to the assumption of the estate by the Court of Wards,—the power was given to borrow considerable sums of money, a power which probably ought not to have been given; but at the same time it is clear from the petition that the petitioner recognised the estate

as being under the Court of Wards, and was fully sensible that without express written permission from them no transaction of the kind could be effected. Probably the Court in granting this permission acted under section 23 of Regulation 52 of 1808, in which, among other things, it is said: "The circumstances of all such debts,"—that is, antecedent debts,—“however, shall be “immediately reported to the Collector, and by “him without delay to the Court of Wards, “with his sentiments on the best mode of satisfying the same, for their instructions, previous “to any payment being made by the manager “in discharge of them.” It would seem that the Court thought that the best mode of dealing with this debt, incurred antecedently to their jurisdiction over the estate, was to allow the lady herself and her daughter and son-in-law to contract fresh loans. Upon this permission they did contract them, and it appears that they entered into four bonds, one of them in favour of the present Plaintiff, Rai Narain Das, dated the 25th January 1872, for 17,000 rupees, and three others to other persons whose names are not material. The terms of these bonds are set out, and it appears that in the bond given to this Plaintiff, there is this statement: “That as “the Taluka Sunwani was held by the Court of “Wards, they were forbidden by law to borrow “debt without the sanction of the Court; they “had obtained a written permission of the Commissioner, and executed the deed of simple “mortgage.” Thereupon the present Plaintiff advances this money, and receives a bond, for the purpose of paying off an antecedent debt, which debt is paid off, and the Plaintiff is paid also; and on the face of this bond he has express notice that there is no power on the part of the lady to contract without the written permission of the Court of Wards, which has been

given. That being so, when we come to the mortgage on which he sues,—and we are here dealing with the mortgage given to himself,—this previous mortgage to him is recited, which contains a statement of the want of power in the lady to contract. He had, therefore, express notice when he entered into the mortgage of the 4th March 1874 that she was acting without authority, and when he took it he certainly took the chance which every man must do who deals with a person who he knows has no authority to contract.

It appears, then, to their Lordships that the giving on the part of the Court of Wards, whether prudently or not, of this limited authority to raise loans for the purpose of paying antecedent debts, was not such a holding out to the world of the competency of Masuma Bibi, and her daughter and son-in-law as would induce any reasonable person to suppose that they had the power to contract debts; and that even if it were so, the Plaintiff at all events knew the true state of the case.

The case against Rai Narain Das on the second bond on which he sues is perhaps somewhat stronger than that on the first, because the first was given to Bisheshur; and the question would be what knowledge Bisheshur had. But when their Lordships consider the necessary notoriety of a large estate being put under the management of the Court of Wards, when they consider further that express notice was given to all creditors of the estate being under the management of the Court of Wards as early as December 1869, that part of the estate was in Benares and that the family resided in Benares, and that Bisheshur was a banker of Benares, they cannot doubt that he must have been perfectly well aware, as Rai Narain Das himself must also have been, that this lady had not the power to contract.

Under these circumstances their Lordships are of opinion that the judgment in the second case, that of the bond of the 4th March 1874, is right.

With respect to the first case, their Lordships think the judgment dismissing the suit on the ground that the Plaintiff was not the purchaser of Bisheshur's mortgage, on the ground of the sale being irregular, and of the Court not having jurisdiction to execute the decree, was wrong. The irregularities referred to, if they existed, were cured by the certificate of sale; and though the Court may not have had jurisdiction to attach lands out of its district, it had jurisdiction to sell in execution the right to enforce the bond. But for the reasons which they have given with respect to the second case, they are of opinion that the judgment ought to have been the same as in that case, that is, a judgment dismissing the suit against the lady and against the Court of Wards, but giving it effect against the daughter and her husband. The judgment in the first case must be so far modified.

In the result their Lordships will therefore humbly advise Her Majesty that, in Appeal No. 121 of 1878, the decree of the High Court of the 26th May 1879 ought to be affirmed so far as it relates to Mussumat Masuma Bibi and the Collector of Ghazipur, on behalf of the Court of Wards, and to the property alleged to have been mortgaged, and to be reversed as to the other Defendants; and that it be declared that Mussumat Said-un-Nissa and Nawab Mohamed Hossein Khan are liable to pay the amount of principal and interest due on the bond in original suit No. 4 of 1878, such interest to be computed at the rate of nine annas per cent. per mensem from the date of the bond to the date of the Order of Her Majesty on this report, and at the rate of six per cent. from the date of the Order to that of payment;

that the case be remitted to the High Court with directions to cause the principal and interest to be computed in accordance with the above directions. And that in Appeal No. 122 of 1878, the decree of the High Court ought to be affirmed.

The Appellant must pay to the Collector of Ghazepur, on behalf of the Court of Wards, his costs of these Appeals to Her Majesty in Council, after deducting therefrom the costs of the Appellant caused by the opposition to the motion to consolidate the Appeals.

