

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeals of Raja Ajit Singh v. Raja Bijai Bahadur Singh and Rani Janki Kunwar, and cross Appeals from the Court of the Judicial Commissioner of Oudh, Lucknow; delivered 24th June 1884.

Present:

LORD WATSON.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THESE Appeals are in two suits. The first was instituted by Rajah Ajeet Singh against Rajah Bijai Bahadur and Rani Janki Koer his wife, who is an independent Talukdar, to recover a sum of Rs. 1,37,000, principal and interest, upon a hypothecation bond of the 19th June 1878, from Bijai, against him personally, and for enforcement of a lien against the hypothecated property. The second suit was instituted by Bijai and his wife against Rajah Ajeet Singh; and it prayed for the recovery of possession, together with mesne profits, of certain property comprised in a sale deed of the 26th May 1879, and for cancellation of the deed on the ground of fraud, undue influence, and want of consideration.

The issues framed in the two suits were these: In the first suit, (1) "Was the Defendant No. 1 (Bijai Bahadur) in an unsound state of mind when he executed the deed of the 19th June 1878?" (2) Was it executed under fraud and undue influence? (3) Did the Plaintiff (Ajeet Singh) occupy a fiduciary position with reference to Defendant No. 1 (Bijai Bahadur)? (4) "Was the deed executed without consideration having been received by Defendant No. 1?" In the

next suit the issues were these: (1) "Was the sale deed executed while Bijai was in a sound state of mind?" (2) "Was the deed executed under fraud or undue influence?" (3) the question of consideration.

The findings of the Judge in the Court of First Instance on those questions are as follows. On the question of the incapacity of Bijai:—"I am of opinion that Bijai's mental capacity is of the lowest order short of idiocy or insanity; that he has always been incapable of understanding complicated matters of business or exercising an independent judgement." As to fraud and undue influence:—"Bearing in mind the weakness of Bijai Bahadur's mental faculties, the fact that Wahaj-ud-din and his adherents, in collusion with Ajit Singh, were encumbering his estate; the peculiar circumstances which have already been mentioned in this judgement; the unconscionable and exorbitant nature of the transactions themselves, I am of opinion that the hypothecation deed of 19th June 1878 (on which this suit is based) and the sale deed of the 26th May 1879 were executed under fraud and undue influence." With respect to the question of fiduciary position, he finds that Ajeet was not technically speaking in a fiduciary position *quoad* Bijai. With respect to the consideration, he finds that some consideration was advanced; and the effect of his judgement is to order the deeds to be cancelled, but to remain as security for the payment by Bijai of such consideration as he received. This portion of the judgement will be more particularly referred to by and by. This judgement of the Subordinate Judge was affirmed by the Judicial Commissioner of Oudh. Against these judgements there are cross Appeals.

The findings on the subject of fraud and undue influence are findings of fact, and their Lordships

adhere to the rule, which they have more than once laid down, that they will not, except under peculiar circumstances, interfere with findings of fact by two Courts. But it has been contended on behalf of the Appellant in the first suit that there was no evidence to support the findings of the Judge.

This makes it necessary, not indeed to review the evidence at length, but to state shortly some of the main outlines of it. It appears that Ajeet and Bijai were two neighbouring Talukdars, distantly related. Ajeet was the elder. He was a man of acute intelligence, and carried on the business of a money lender. Bijai was of weak intellect, had been paralysed soon after his birth, and was afflicted with epileptic fits, the tendency of which would be to deteriorate what understanding he had. Bijai, on his father's death, appears to have taken possession of the ancestral estate, and to have so mismanaged it that the Court of Wards thought it necessary to take the management of it upon itself. In 1870 Bijai applied to be restored as manager; and having been examined by the Court of Wards, the estate was released to him. The view taken of his capacity by the Court at that time appears from a judgement to be found at page 25 of the record:—"The Court concurs with
 " the assessors that the Defendant Raja Bijai
 " Bahadur Singh is not of unsound mind and
 " incapable of managing his affairs. He is
 " feeble, and doubtless easily influenced by
 " artful persons, and incapable of any great
 " effort of body or mind, but he is not at all
 " incapable in the sense meant by the Act." Then they go on to say:—"Decree for the Defendant," on the ground "that he is not a
 " lunatic"; whereupon the management of this estate was, their Lordships cannot help thinking unfortunately for him, reintrusted to him.

With respect to his capacity there is some evidence given by himself in this record, by which, if it is correct,—and it was for the Subordinate Judge who heard the witnesses to determine whether it represented or not the true state of his mind,—it would appear, although he signed various deeds that were put before him, he was not acquainted with the nature of their contents; and that evidence, as far as the accounts are concerned, is to some degree corroborated by that of Wahaj-ud-din, his agent, who says the accounts were written in Persian, a language which he did not understand. Their Lordships, therefore, think there was ample evidence on which the Judge was justified in his finding as to the capacity of Bijai. This being so, it is obvious that a neighbour and a relation, of acute intelligence, would, in all probability, exercise a great influence over him. Upon his being reinstated in the management of his estates it became necessary for him to borrow for the purpose of paying arrears of the Government revenue; and in 1872 it appears that he sold some 50 villages to Ajeet for the sum of Rs. 1,25,000, the greater portion of which was appropriated to the payment of the Government revenue. That transaction has not been impugned, and it will not be necessary further to refer to it. At that time, in 1872, the two Talukdars seem to have been somewhat estranged. In 1875 they were reconciled. About the time of the reconciliation Ajeet took occasion to advise Bijai to employ as his agent or karinda a man of the name of Wahaj-ud-din. Wahaj-ud-din was entrusted by Bijai with extraordinary powers. We have a document styled a Safinama, of the 25th August 1875, wherein Bijai entrusts to his manager powers of appointing general agents; of dismissing and confirming patwaris and chowkidars; of executing documents, leases, and so

on; power of borrowing money; power of executing simple bonds for borrowing money, or borrowing money by hypothecation or usufructuary mortgage of property; and a number of powers which the Judge of the First Instance describes as making him in effect the proprietor of the estate. This document was little less than an abdication on the part of Bijai of his ownership of the estate in favour of the manager. It appears to their Lordships that a man in full possession of his faculties would not execute a document of this kind. This manager, Wahaj-ud-din, in pursuance of the powers here given him, hired a vast number of servants, displacing the old Hindoo servants of Bijai by his own friends and protegés, as they are somewhere called, so that Bijai was surrounded by Wahaj-ud-din and Wahaj-ud-din's Mahomedan adherents. It seems by the evidence of several of the witnesses that Ajeet and Wahaj-ud-din were in the habit of communicating together, and that Ajeet exercised great influence over Bijai. The powers of borrowing given to Wahaj-ud-din were soon exercised. In December of that year a bond is prepared by Wahaj-ud-din, and is executed by Bijai, whereby he borrows a sum of Rs. 6,000 of Ajeet at the rate of 24 per cent. The principal of that sum, together with interest, accumulated, and in February 1876, two months after, another bond of Rs. 9,000 was given; and without going through the details of all these transactions, it appears that as many as 12 bonds were taken by Ajeet from Bijai in the course of about three and a half years, the interest and the principal rolling on until finally it reached the sum of Rs. 1,37,000, the subject matter of this suit. In these cases the money was sometimes paid to Bijai, and sometimes paid to his manager. He goes through the form—one can hardly suppose it to be much more—of writing his name at the

bottom of the deeds, which were witnessed by the Mahommedan servants in the employ of Wahaj-ud-din.

It has been contended that there was no foundation for the finding in the following terms of the learned Judge that Ajeet and Wahaj-ud-din acted in concert. "It is impossible not to feel convinced that Wahaj-ud-din was gravely mismanaging the estate; that by duping his master he was dishonestly benefiting himself; that this state of things was fully known to Ajeet Singh (as admitted by him in his deposition); that the latter was all along anxious, fairly or unfairly, to encumber the estate so completely as to bring about the result which he seems to have had in view, viz., the acquisition of proprietorship of Bijai Bahadur's entire Taluka."

It is true that there is no direct evidence in the record of a conspiracy between Ajeet and Wahaj-ud-din; but they acted together against the interest of this unfortunate Talukdar. His agent induced him to sign a number of bonds for sums of money which have been found not to be necessary for the purposes of the estate; and Ajeet, whose duty as a relative, a friend, and a neighbour of Bijai, a man of weak intellect, was to have warned Bijai against the proceedings which were going on to his own ruin, so far from doing this, acts in concert with the unfaithful steward, and not only does he act in concert with him, but he profits principally by their joint transactions. Under these circumstances it appears to their Lordships that the learned Judge was amply supported by the evidence in his finding.

Such being the finding of the learned Judge, and the concurrent findings of two Courts, supported by adequate evidence, it follows that that judgement must be supported so far as the cancel-

lation of the deeds is concerned, and that the appeal of Ajeet must be dismissed.

But another question is raised by the cross Appeal. The finding of the learned Judge, with respect to the consideration for the deeds, is in these terms (it seems that the evidence of advances was that money was paid from time to time, in the presence of the registrar of the Court, sometimes being handed to Bijai himself, sometimes to his manager):—"But having considered the evidence, I am satisfied that the principal sums in cash said to have been advanced at various times by Ajit Singh were made over either to Bijai Bahadur, or on his behalf to his karinda Wahaj-ud-din;" and in accordance with that finding, he says "I am of opinion that substantial justice will be done between the parties if the Plaintiff is decreed the principal sums advanced by him, together with interest at 8 per cent. per annum on each of the sums calculated from the date of the suit, viz., 23rd January 1880, and no interest allowed subsequent to the date of the suit." He treats as sums proved to have been advanced all the principal payments which were made. It has been argued, not that this finding is wrong in point of fact, but that the learned Judge has made a mistake in point of law; and their Lordships think that the judgement relating to these payments cannot be supported. The finding, as before observed, is that the sums were paid either to Bijai Bahadur, or on his behalf to the karinda Wahaj-ud-din. The learned Judge appears not to have applied his mind to the question as to how much actually got into the hands of Bijai himself; with reference to which sums, it would seem difficult to say that he could have a right to cancel the deeds without repaying them. But considering the relations that have been found to exist between Ajeet and Wahaj-ud-din, their

Lordships are of opinion that Ajeet cannot raise a claim against Bijai merely by showing that he paid money to Wahaj-ud-din ; he must show further that his advances were really applied to the benefit of Bijai, or were properly borrowed on his behalf.

Under these circumstances it appears to their Lordships that the decree of the Court below requires some amendment ; and they propose to advise Her Majesty that that decree should be amended in this way : They think it should be varied by directing that, instead of the account which the Munsarim is thereby ordered to take, it be referred to the Munsarim to take the following accounts : first, of such sums advanced by Ajeet as shall be proved to have been paid to and received by Bijai personally ; secondly, an account of such sums advanced by him as Wahaj-ud-din would have been justified in borrowing in the course of a prudent management of Bijai's estate ; thirdly, an account of what is due upon such advances for simple interest at eight per cent. from the date of the advance to the time of payment. Their Lordships cannot quite concur with the learned Judge in holding that the interest should be confined to the date of the suit. Their Lordships think that the decree in the other case, which is in many respects the same, but has peculiar circumstances affecting it, (that is, the first suit by Bijai and his wife,) should also be amended to the same extent.

Under these circumstances their Lordships will humbly advise Her Majesty that the decrees be varied in the manner stated. It appears to their Lordships that Bijai and his wife are entitled to the costs of both Appeals.