Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of Waghela Rajsanji v. *Shekh Masludin and others, from the High Court of Judicature at Bombay; delivered March 3rd*, 1887.

Present:

LORD WATSON.
LORD FITZGERALD.
LORD HOBHOUSE.
SIR BARNES PEACOCK.

IN this case the Appellant, who was the Defendant in the Court below, is the Talukdar of Ahmedabad, and the Plaintiff, who is the Respondent—there has been some change of title since, but throughout this Judgement the Plaintiff will be referred to as a single person—brought a suit to enforce a covenant which was entered into in the year 1858 by the Defendant's mother and guardian on his behalf when he was a boy 11 years old. That covenant arose in this way. The Plaintiff was a creditor of Sewsangji, the Defendant's father, and the debt appears to have been one for which the Talukdari family estate might be made liable. Under those circumstances, in 1858, an account was stated of the amount due to the Plaintiff, which was found to be Rs. 35,001. In lieu of enforcing that debt by decree and execution, he took a conveyance from the mother and guardian, Bai Ramba, of a certain extent of the family land—the exact extent does not matter now. The validity and propriety of that transaction was challenged by the Defendant after he came of age. It was the subject of a suit in the year 1868, and the result was to establish that the transaction

A 50661. 125.—3/87. Wt. 5607. E. & S. A

9

was a valid one *bonâ fide* entered into by the guardian, and within the range of her powers. There is therefore no question in this suit as to the propriety or expediency of the sale of 1858; but the question is as follows. The family claimed to hold the conveyed land rent free, and the guardian conveyed it as rent free, and their Lordships must assume that it was valued on that basis. The purchaser was not content with the assertion of the family that in point of fact they paid no rent, though that seems to have been the fact, but he took a covenant from the guardian to indemnify him in case the Government should enforce their claim to receive rent out of the estate, and that covenant is framed so as to bind both the guardian and the infant, who was nominally by his guardian a party to the deed. That the covenant bound the guardian there can be no doubt, but the question is whether it could bind the infant Talukdar. Unfortunately neither of the Courts below addressed themselves to this question, because they held that it had been already decided by the Decree made in the prior suit.

Looking at the prior suit, their Lordships find that it was a suit to impeach the whole sale, on the grounds, first, that it was fraudulent, and, secondly, that it was beyond the powers of the guardian and manager. No question whatever was raised as to the validity of the guardian's covenant as against the infant. In fact it is impossible that that covenant could have come into question, excepting as a subsidiary argument to show that the deed was an improper one, and then the curious result would be this: That the more clearly that covenant was void in law, the less would be the force of the argument founded upon it. In point of fact, neither in the pleadings nor in the decree in that suit can it be discovered that anybody paid

any attention to the point which is now under consideration. Their Lordships therefore must hold that to be an open point in the present suit.

Now it was most candidly stated by Mr. Mayne, who argued the case on behalf of the Respondent, that there is not in Indian law any rule which gives a guardian and manager greater power to bind the infant ward by a personal covenant than exists in English law. In point of fact, the matter must be decided by equity and good conscience, generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances. Their Lordships are not aware of any law in which the guardian has such a power, nor do they see why it should be so in India. They conceive that it would be a very improper thing to allow the guardian to make covenants in the name of his ward, so as to impose a personal liability upon the ward, and they hold that in this case the guardian exceeded her powers so far as she purported to bind her ward, and that so far as this suit is founded on the personal liability of the Talukdar, it must fail.

That however is not the whole of the covenant. By way of security for its performance the deed gives a charge upon the other Talukdari estates, some specified Wanta lands and Giras lands, and the other property generally. Mr. Mayne reasoned on that in this way. He said the land was valued as rent free; if it had been valued as subject to rent, the creditor would have insisted on having so much more of the land; therefore family land is saved by valuing as rent free, the land actually taken, and it was not only reasonable but within the compass of the guardian's powers to deal with the remaining family land of which she was manager, so as to make it a security to the creditor against his loss by the Govern-

ment exacting rent. The argument is one which is worthy of great consideration, but their Lordships do not wish to pronounce any opinion on it or to subject it to any minute examination, because assuming it in favour of the Respondent to be a sound argument, they are clearly of opinion that so far as regards the Talukdari estate—and that is now the only part of the case which they have not dealt with—an answer to it is to be found in the terms of the Ahmedabad Talukdari Act, Act VI. of 1862.

In the opinion of the Subordinate Judge, the Defendant in the suit was liable personally, but his estate could not be charged on account of the terms of the 12th section of the Talukdari Act. In the opinion of the High Court he was liable both personally and as regards the Talukdari estate, and their decree is founded upon that opinion.

The object of the Talukdari Act was to maintain the status and order of Talukdars, which the Government as a matter of policy thought it important to maintain. They were a class of gentlemen who had been living beyond their means; they had got very much embarrassed, and they did not perform those political objects which the Government thought of great importance to have performed in various parts of the country. Many Acts of the kind have been passed relating to different parts of the country, and all with the same object. The method adopted was, where a Talukdari estate had reached a certain pitch of embarrassment, to make a declaration placing it under the management of an officer who was to manage for a term of years which might extend to 20 years. During that time he was to maintain the Talukdar and his family, to pay all the expenses of the management, and then to apply the surplus to liquidate or settle the debts of the Talukdar, in liquida-

tion or settlement of the debts and liabilities to which at the time of the declaration the Talukdar was subject, either personally or in respect of his landed estates. But at the end of the 20 years the estate was to be restored to the Talukdar absolutely, free of incumbrance excepting the Government tax. If the debts amounted to more than the surplus rents during the term would suffice to pay, those debts were not to be paid at all. It may have been a very arbitrary way of dealing with creditors, but that was the policy of the Act, and in construing the Act it must be remembered that it recites that the Talukdari estates could not be lawfully charged, encumbered, or alienated. It is said that that recital was wrong. The High Court state it to be wrong, and they state moreover that it was put in merely as a justification to the Government for dealing in the summary manner in which they did with the creditors rights. All that may be true. It may be true that the statement of the law is wrong, and the motive assigned may be true for aught their Lordships know. But supposing it is, it must be remembered that that was the idea in the mind of the Legislature, and all the provisions affecting creditors must be construed with reference to that idea, under which every benefit given to the creditor out of the Talukdari estate would be in the nature of an indulgence, because he got something which he could not enforce by law.

Before examining what the enactments actually are, it would perhaps be convenient to state the order of events. The Defendant attained his majority in August 1863, and the order placing his estate under management was made very soon afterwards. The exact date does not appear, but it was towards the end of 1863. The Government claimed rent against the Plaintiff in respect of the estate that he had bought in the year 1871, and

this right to rent was finally established by Decree of the High Court about the year 1875. At all events the claim was made and fully established during the period of management of the Talukdari officer, so that the dates lead up to this result, that owing to the liability which was incurred in the Deed of 1858, the Plaintiff had a claim measurable in money against the Defendant, perhaps as early as the year 1871, but at all events between then and 1875. It is not necessary to be more exact in the dates.

Now what does the Act provide? The preamble and the first nine sections deal with what they call existing debts and liabilities, and they deal with them in a very summary way. All processes by which any of them could be enforced are stopped, and in lieu of those processes, the creditors have only the indulgence which has just been mentioned, of receiving the surplus rents for a term of years. Section 9 enacts that: "Any debt or liability of the Taluk-" dar other than as aforesaid;" (those words of exception may be dropped out for they only refer to Government claims) " to which he is subject " either personally or in respect of the said " landed estates existing at the time of the said " declaration by the Governor in Council;" (that is the order subjecting the estate to management) " not duly notified to the said officer or officers," within a time specified "shall and is hereby " declared to be for ever barred." Then section 12 says that any debt or liability, with the same exception, " which may be incurred by the " Talukdar either personally or in respect to his " said landed estates or any part thereof, during " the period of such management as aforesaid " shall not be enforcible in any manner what-" ever, either during or subsequently to such " period of management, against his landed " estates or any part thereof." Here we have

an Act designed to set up the order of Talukdars in an unembarrassed state, and to restore them their land within a period of, at most, 20 years, and dealing first with debts and liabilities existing at the commencement of the period of management, and secondly, with debts or liabilities incurred during the period of management. In such an Act their Lordships think it impossible to come to any other conclusion than that it was intended to deal with all debts and liabilities which could possibly impose a charge on the Talukdar at the end of 20 years, and that to strain words from their literal ordinary meaning for the purpose of showing that the liability now in dispute is one which does not fall within the compass of that Act, is an erroneous construction of the Act.

The High Court have given the Plaintiff a Decree on this ground, that the debt that he claims does not fall into the first class of debts and liabilities because it was not existing when the period of management commenced, and that it does not fall within the second class because it was not incurred during the period of management. The result is this, that because when the management commenced there happened to be no means of reducing the liability into a claim measurable in money, and because the Talukdar did not, during the period of management, do some voluntary act to incur a fresh liability; therefore at the end of 20 years a great burden remains upon the estate. Their Lordships think that is not only contrary to the policy of the Act, but a departure from the obvious literal plain construction of the words. It may be true, and their Lordships think it is true, that when the management commenced the liability was not one that was measurable in money. It may not have been the subject of a claim against the estate, though that point would seem to

depend on the nature of the rules made by the Governor in Council for the liquidation of debts. But it does not follow at all that it was not a liability which section 9 was calculated to bar. All liabilities were to be notified, and even if there were any so situated that the creditor could get nothing, the intention of the Legislature to bar every liability that existed then is, as their Lordships think, a plainly expressed intention.

Then as to section 12, the debt must have been incurred at some time, otherwise it could not be recovered. When was it incurred? According to the reasoning of the High Court it never was incurred. There was no debt when the period of management commenced, and no debt was incurred afterwards, because there were proceedings to which the Talukdar was no party which converted the liability into a money claim. Their Lordships think that that is not the meaning of the word "incurred." It is not the common meaning of the word "incurred." Incur means to run into, no doubt, but it is constantly used in the sense of meeting with; of being exposed to; of being liable to; and in that sense the Talukdar did incur debt. The liability was inchoate in the year 1858, and it reached its maturity some time between 1871 and 1875. If it was not a liability existing in 1863, when the period of management commenced under section 9, then it must be either a debt or liability incurred during the period of management. It is not necessary to decide under which section the case falls. Their Lordships incline to think that it falls under section 9, but they are quite clear that if it does not fall under section 9, it must fall under section 12. In either case the Act is sufficient to relieve the Talukdari estate, which is the only point in question at this moment.

The result is that their Lordships think that the High Court ought to have reversed the decree

below, and to have dismissed the suit with costs, and they will humbly advise Her Majesty to make that Decree. The Respondent must pay the costs of this appeal.

Their Lordships are sorry to find that this record contains what they so often observe upon, namely, an enormous mass of matter which could not by any possibility be of use upon this appeal. They would wish to call the attention of the Courts in India again to that circumstance, in the hope that they may find some remedy against that which is a serious mischief in increasing costs.