

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Vis-
sanji, Sons, and Company v. Shapurji Burjorji
Bharoocha, from the High Court of Judicature
at Bombay; delivered the 3rd May 1912*

PRESENT AT THE HEARING.

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALL.

[DELIVERED BY LORD MACNAGHTEN.]

The question in this case turns simply upon the construction of a very short document. It is addressed to the Appellants, and is in these words:—"In consideration of your having at
" my request acceded to the proposal of the
" Secretaries, Treasurers, and Agents of the
" Tricumdas Mills Company, Limited, to advance
" to the Mills a sum of Rupees one lac and fifty
" thousand, I hereby bind myself to you to
" procure a loan within two weeks of Rupees
" eleven lacs as the first mortgage of the Mills
" block property, and to pay to you thereout the
" said sum of Rupees one lac and fifty thousand
" agreed to be advanced by you to the Mills."

Everybody is now agreed that what took place after the execution of that document can have no bearing on the construction of it. All that the admitted evidence shows is that the

Appellants wanted some real and substantial security for their advance. They advanced the lac and a half, and the only question is, what is the meaning of this guarantee? Does it mean that all that the Respondent undertook was that he would find somebody willing to lend eleven lacs on a first mortgage of the mill and that he was to do nothing further except, if that arrangement was carried through, he would pay to the Appellant out of the loan a lac and a half?

Various constructions have been suggested. The one which Sir Robert Finlay, for the Respondent, finally adopted is the one on which the Judges in the Appeal Court relied. They say they agree with the Respondent when he says "that all he had undertaken to do was to procure the lending of eleven lakhs if a first mortgage of the Mill was given, and to pay thereout Rupees $1\frac{1}{2}$ lacs to the Plaintiff."

Their Lordships read the document not in that sense at all, but as a substantial undertaking that a loan should be procured, and that out of that loan this sum of Rs. 1,50,000 should be repaid.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be allowed, and that a decree should be made in favour of the Appellants. Of course the Respondents will pay the costs of this Appeal, and the costs below.

In the Privy Council.

VISSANJI, SONS, AND COMPANY

v.

SHAPURJI BURJORJI BHAROOCHA.

DELIVERED BY LORD MACNAGHTEN.

LONDON:

PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.