

Privy Council Appeal No. 63 of 1919.
Patna Appeal No. 17 of 1917.

Maharaj Bahadur Singh - - - - - *Appellant*

v.

A. H. Forbes - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 15TH NOVEMBER, 1920.

Present at the Hearing :

VISCOUNT CAVE.

LORD SUMNER.

SIR JOHN EDGE.

[*Delivered by VISCOUNT CAVE.*]

In their Lordships' opinion there is no ground for this appeal. Proceedings to set aside the sale were taken both under Section 311 of the Civil Procedure Code of 1882, corresponding with Order XXI, rule 90, of the Rules scheduled to the Civil Procedure Code of 1908, and under Section 313 of the Code of 1882, corresponding with rule 91 of the same Order. The sale was duly set aside ; and accordingly Order XXI, rule 93, applied and the Court had power to order interest to be paid on the sum of Rs. 40,708 paid to the trustees. This being so it is unnecessary to consider whether, as the High Court appears to have held, Section 144 of the Code of 1908 also applied. It is true that the bond did not reserve interest, but the effect of this omission was, not that the Court was deprived of its power to order interest to be paid, but only that the security did not extend to interest. It is common ground that the order so far as it directs the payment of interest is not intended to be enforced against the appellant personally, but only binds the estate in the hands of the trustees in which the appellant is interested.

An attempt was made to raise a question of limitation, but this question was not raised in the Courts below or in the appellant's case on this appeal, nor are the facts upon which it depends fully before the Board. This plea, therefore, cannot be raised at this stage.

Their Lordships will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

MAHARAJ BAHADUR SINGH

o.

A. H. FORBES.

DELIVERED BY VISCOUNT CAVE.

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