

Privy Council Appeal No. 1 of 1938

The Peoples Bank of Northern India Limited
(in liquidation) - - - - - *Appellants*

v.

Mian Ghulam Jan and another - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER FOR THE
NORTH-WEST FRONTIER PROVINCE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 22ND JULY, 1938

Present at the Hearing :

LORD WRIGHT
LORD ROMER
LORD PORTER
SIR SHADI LAL
SIR GEORGE RANKIN

[*Delivered by* SIR SHADI LAL]

The respondent, Mian Ghulam Jan, carried on the business of buying and selling carpets at Peshawar; and for the purpose of his business he borrowed money from the appellants, the Peoples Bank of India, Limited, on what is called "cash credit account." He got also another loan from the bank, for which he executed a promissory note on the 29th August, 1930, and pledged his carpets as security for the payment of the debt. At the end of April, 1931, his liability to the bank amounted to Rs.3,110-7-9 on the cash credit account, and to Rs.11,740-14-3 on the promissory note account. The total sum due by him was Rs.14,851-6-0. He did not discharge his liability, with the result that the creditors threatened to bring an action against him to realise the debt by selling his carpets. The debtor, however, got a postponement of the time for payment, by executing a mortgage deed in favour of the creditors. The mortgage deed was written to secure the payment of the amount due by the debtor on the two accounts, and also of Rs.148-10 which was paid to him at the time of the transaction in order to make up the round sum of Rs.15,000. The security for the payment of this consolidated sum was a house, which was owned by him and his wife Musammat Mohamadi Begum in equal shares. In order to make her share of the house liable for the mortgage money, she affixed her thumb impression to the mortgage deed, which contained various stipulations, including the promise to pay the mortgage money with

interest at 9 per cent. per annum within one year. It was agreed that the creditors would not be entitled to recover the mortgage debt before the expiry of one year, but that they could enforce their claim after the expiry of the stipulated period in the event of the mortgagors' failure to pay the debt.

The promise as to the payment within one year was not fulfilled by the mortgagors, and the bank consequently brought the present action against them to enforce their personal liability and also to recover the debt by the sale of the house, which was mortgaged as security for it. The Courts in India have concurred in granting a decree against the husband, but have exempted the wife and her share in the house from liability. The decision of the appellate Court has proceeded on the ground that there was no consideration for her promise to pay the debt of her husband.

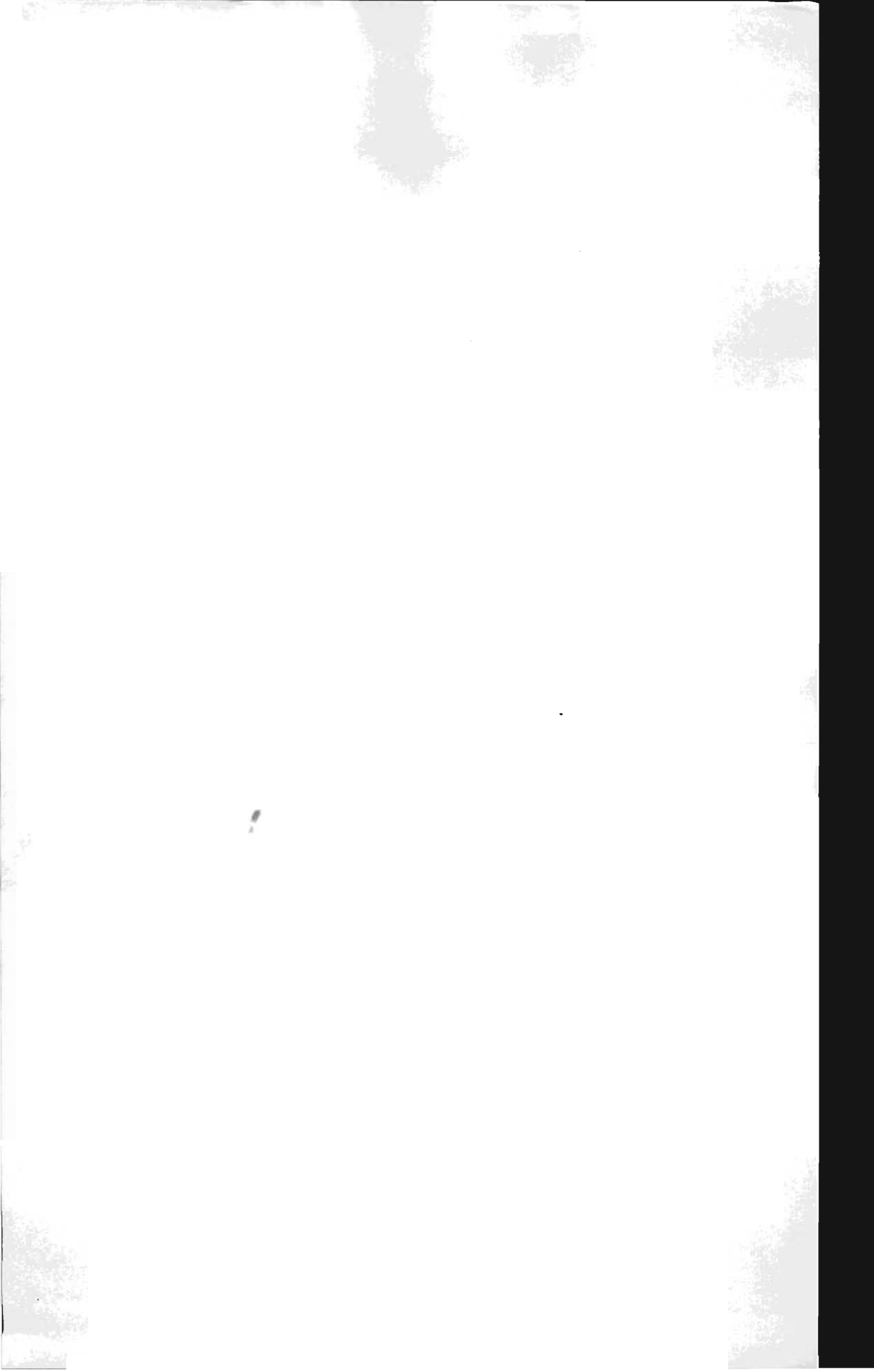
There is no evidence to prove that Musammat Mohamadi Begum, who was admittedly a purdanashin lady unable to read or write, knew or understood the contents of the mortgage deed which sought to make her share in the house liable for the payment of the debt. The endorsement made by the Sub-Registrar at the time of the registration of the deed is in ambiguous language, and does not show that either he or any other person explained the deed to her.

The rule is firmly established that it is incumbent on the Court, when dealing with the disposition of her property by a purdanashin woman, to be satisfied that the transaction was explained to her and that she knew what she was doing.

This plea was expressly raised by Musammat Mohamadi Begum, but no issue was framed on the subject, except the issue as to her executing the deed under the influence of her husband. Their Lordships, upon the record, as it stands, are unable to hold that her liability has been established.

On this view, the question of consideration need not be discussed, more particularly, as apart from the deed, there is no evidence to show that it was in response to Musammat Mohamadi Begum's request that the bank stipulated not to enforce the liability of her husband during the period of one year mentioned in the deed.

The appeal, therefore, fails, and must be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council

THE PEOPLES BANK OF NORTHERN
INDIA LIMITED (IN LIQUIDATION)

2.

MIAN GHULAM JAN AND ANOTHER

DELIVERED BY SIR SHADI LAL

Printed by His Majesty's STATIONERY OFFICE PRESS,
POCOCK STREET, S.E. 1.

1938