Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Shah Koondun Lall and Shah Phoondun Lall, Appellants, v. Rajah Ameer Hussun Khan and others, Respondents, from the Court of the Judicial Commissioner of the Province of Oude; delivered 1st February, 1867.

Present:

Sir James W. Colvile.
Sir Edward Vaughan Williams.
Sir Richard T. Kindersley.

Sir Lawrence Peel.

THE Appellants are Shroffs and money lenders, carrying on business at Muttra. The Respondents are the infant son and heir of the late Nawab Ali Khan, who was Talookdar of Mahmudabad, in the province of Oude; the native manager or curator, appointed by the Court of Wards, which, during the minority of the Talookdar, has the custody and management of his estate; and the Deputy Commissioner of Seetapore, who represents, and exercises the functions of, the Court of Wards in that district. The deceased Nawab died largely indebted to the Appellants: and the question on this Appeal is whether the Decree which has been made in their favour by the Civil Court of Lucknow, and has been confirmed by the Judicial Commissioner of Oude, has awarded to them all that they had a right to claim.

The latest transaction between the Appellants and the Nawab, of which there is any evidence, was in May 1856; when, as they allege, an account was settled between them and their debtor, and the

securities on which they sue were taken from the foot of it. One of the bonds is not forthcoming, but by the other the sum thereby secured, which was by far the larger portion of the debt, was made payable by instalments, of which the first fell due about September 1857. At that time British rule had been interrupted, and all civil administration suspended, by the mutiny; and that state of things continued until after the Nawab's death in 1858. In April 1859, when order had been restored, and the Court of Wards had assumed the management of the estate, the Appellants claimed the sum of 35,239 rupees, as then due to them for principal and interest. The suit, however, out of which this Appeal has arisen was not actually commenced until January 1862. Certain proceedings, which are given in detail in the Appendix, were had during the intermediate period. But all these are beside the present question. They may have been material below in order to show the *bona fides* of the demand; to account for the delay in prosecuting it; and to meet the point, which was at one time raised, that the suit had not been commenced within the period of limitation. This last objection has, however, been abandoned; and it must be taken to be a fact established, if not admitted, that something is recoverable upon the principal security on which the suit has been brought.

The particulars of the Appellants' demand were annexed to the plaint, and are set forth at page 2 of the Appendix. They claimed as then due to them the principal sum of 22,188 rupees, of which 20,488 rupees were stated to be due on a bond of a date corresponding with the 15th of May, 1856, and 1,700 rupees on another bond of the same date. They further claimed the like sum of 22,188 rupees as due for interest on the principal debt; a larger sum being, as they alleged, in fact so due, but the practice of the Courts of India forbidding the recovery under the head of interest of any amount in excess of the principal. And they also claimed a sum of 5,711 rupees 5 annas 3 pice, alleged to be the balance due in respect of an allowance agreed to be paid to the Karindahs or agents of the Appellants. They gave credit for 100 rupees, admitted to have been received some time in 1857, and thus reduced the balance claimed to 49,987 rupees 5 annas 3 pie.

The Appellants filed in Court the bond for the 20,488 rupees, which was marked A. They did not produce the bond for the 1,700 rupees, which they said had been lost, but they also filed the note of hand or letter of the same date B, which is in these words, "My dear Shah Koondun Lall,—As two bonds have been executed through your agents, viz., one for 20,488 rupees, and the other for 1,700 rupees, you may rest assured that payment will be made on account of the rights of your agents at the rate of 8 annas per 100 rupees per month." They seem to have relied on this document both as corroborative evidence of the execution of the second bond, and as a voucher in support of the claim for the allowance to the agents.

The issues settled in the cause, on which the parties went to trial, were: 1st. Is A the deed of Nawab Ali Khan deceased? 2ndly. How much was repaid? 3rdly. Is B under the seal of the deceased, and if so, is it a valid acknowledgment of debt, especially with reference to an alleged bond for 1,700 rupees? 4. Up to what date, and at what rate, is interest claimable?

The Decree which is under appeal reduced the principal sum recoverable by the Appellants in this suit to 18,145 rupees, and allowed interest on that sum at the rate of only 12 per centum per annum, from the 15th of May, 1856, to the date of suit, deducting from that period the ten months of the rebellion. It rejected altogether the claim for the allowance to the agents.

Their Lordships will consider the propriety of this Decree—1st, with reference to the principal money claimed under the bonds; 2ndly, with reference to the interest; and lastly, with reference to the agents' allowance.

It is obvious that as regards the 20,488 rupees claimed to be due upon A, the only issue before the Court was, whether that document had been duly executed by the deceased. The third issue, as their Lordships understand it, involves the questions, whether B was under the seal of the deceased; and, if so, whether it can be taken to establish that he had executed the second bond for 1,700 rupees, and to supply the want of that missing instrument. Upon these issues the Appellants were not bound to prove the consideration for the bonds. But, inas-

much as no Court of Justice would in the circumstances have accepted the mere proof that the seals on A and B were true impressions of the deceased Nawab's seal as sufficient proof of the due execution by him of either bond, it became necessary to go fully into the history of the transaction of the 15th of May, 1856. Accordingly evidence was given to show that on that day there was a settlement of accounts between the Nawab and the servants of the Appellants who had come over to Mahmudabad to "dun" him for what was due from him to the Appellant's firm; that the result of that settlement was to strike a balance of 22,188 rupees, as the amount then due for principal and interest; and to agree that in consideration of the forbearance by which the larger portion of this sum was made payable by instalments the interest then due should be turned into principal; and further that the two bonds were executed on the footing of that settled account; the Paper B being also sealed at that time. This is the general effect of the evidence, which, notwithstanding certain discrepancies, and some confusion touching the Exhibit C, their Lordships are disposed to accept as substantially true, particularly as there is nothing to set against it, and it is confirmed by Seetaram, the witness examined at the instance of the Defendants.

If the case rested there, it would be difficult to see upon what ground the Respondents could resist a Decree for the full amount secured by the bonds, or at least that secured by Bond A. It appears, however, that the Appellants produced the accounts which resulted in the balance of 22,188 rupees. The record does not show why this was done. There is no order of the Court requiring their production. It is possible that the production may have been voluntary, and that these accounts were put in in order to corroborate the evidence of Datta Mull as to the bond for 1,700 rupees, which they do by the entry at page 25 of the Appendix. All that is clear on the record is, that the accounts were brought in between the 22nd of July and the 20th of August; that the Defendants (the Respondents) took no objections to them, except that "the interest was inserted in a single lump, and not in separate items, after two years' running accounts; so that it was impossible, without calculating interest throughout, to tell on what principle it was done." In conse-

quence of this objection, the Judge referred the accounts first to the native Secretary of the Chamber of Commerce at Lucknow, and afterwards to other Mahajuns and experts; and the final result of their investigation was, that, by recasting the account of interest, they reduced that portion of the balance due in May 1856, which consisted of interest and expenses, from 13,580 rupees 6 annas 9 pie to 9,547 rupees 8 annas 9 pie, making the whole amount due at that date 18,145 rupees 2 annas, instead of 22,188 rupees.

Their Lordships do not attempt to enter into the question whether the principle upon which the Appellants kept their account, or that upon which the account has been recast by the experts, is the correct one; because they are of opinion that no case was made for reopening the account which was settled on the 15th of May, 1856. The evidence of Seetaram, the witness for the Respondents, shows that the Nawab examined the accounts; that he objected to the interest; but that he nevertheless finally submitted to the account rendered, accepted the balance shown as the sum due, and, in consideration of his creditors' forbearance, executed the bonds by which payment of that balance was secured. He was no doubt very much at the mercy of his creditors; his case was the ordinary one of a needy landholder purchasing the forbearance of those who had ministered to his necessities by submitting to very usurious terms. But, with his eyes open, he entered into a contract which is not forbidden by any law. No fraud, in the proper sense of the word, has been established; and their Lordships cannot agree with the Judicial Commissioner in thinking that, upon the facts proved, the Nawab would in his lifetime have been entitled to reopen an account which he had advisedly settled. And if this could not have been done by him in his lifetime, it cannot now be done by his representatives. Their Lordships, therefore, conceiving that there is sufficient proof that the missing bond for 1,700 rupees was duly executed as well as A, and that the two were given to secure the balance of 22,188 rupees, must hold that the Appellants have made out their right to recover that principal sum in this suit.

Their Lordships are unable to see upon what

ground the Courts below have reduced the rate of interest on the sum which they awarded as due on the 15th of May, 1855, below the contract rate. Their course would perhaps be intelligible if they had set aside the securities altogether as fraudulent, and had treated the sums awarded as due on open account; no rate of interest being fixed by either positive stipulation or the course of dealing between the parties. The facts, however, would not support such a view of the case; nor does Mr. Fraser, notwithstanding some loose and inaccurate expressions in his Judgment, appear to have entertained it. The intention of the Decree, as explained by the Judicial Commissioner, at page 44 of the Appendix, was simply to correct the account, and to allow A to stand as a security for the reduced balance. And if A were to stand as such security, the contract rate of interest would remain. It must *à fortiori* remain, if, as their Lordships think, there is no ground for reopening the accounts, and reforming the contract of the deceased Nawab.

Some difficulty might arise in respect of interest from the absence of the missing bond, and the imperfection of the evidence as to its details, if the whole amount of interest that has accrued was demandable in this suit. But inasmuch as the Appellants have been obliged to limit their demand for interest to a sum equal to the principal, and the interest due at the contract rate on Bond A alone considerably exceeds the sum of 22,188 rupees, the difficulty suggested does not arise in the present case. Again, it is not easy to see upon what principle of law, equity, or sound policy the period of the rebellion should be excluded from the time for which interest is computed. It is unnecessary, however, for their Lordships to amend the Decree in this respect; because, even if that deduction be allowed, the interest which has accrued would still be in excess of the principal.

Their Lordships, then, are of opinion that the Appellants have established their right to recover the whole of both the principal money and interest claimed by them to be due on the bonds.

But the claim of the further sum of 5,711 rupees 5 annas 3 pie in respect of "allowance due to the Karindahs and agents," under Exhibit B, was, in their Lordships' judgment, properly rejected by the

Courts below. Whether that allowance was a contrivance for adding another half per cent. to the usurious interest already secured by the bonds, or whether it was what it purports to be—a gratuity to the Appellants' servants, their Lordships do not pretend to say. It seems, in any point of view, to be something *dehors* the contract; and the evidence fails to show that there was any consideration to support the assurance or promise to make this payment, which is contained in Exhibit B. If this item be struck out of the particulars, it will reduce the Appellants' demand to 44,276 rupees, which sum, with interest at the ordinary Court rate from the date of the Decree to the date of payment, they are, in their Lordships' judgment, entitled to recover in this suit.

Their Lordships will, therefore, humbly recommend Her Majesty to reverse the Order of the Judicial Commissioner of Oude of the 11th of May, 1863, and to declare that the Appellants were entitled to recover in this suit the sum of 44,276 rupees, in lieu of the sum of 28,645 rupees, awarded to them by the Decree of the 24th November, 1862, and likewise the costs of the proceedings in both the Courts below, and that the cause be remitted to the Civil Court of Lucknow, in order that the last-mentioned Decree may be amended accordingly.

The Appellants' costs of this Appeal must be paid by the Respondents.