Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Doorga Persad v. *Baboo Kesho Persad and others, from the High Court of Judicature, at Fort William, in Bengal; delivered January* 13*th*, 1882.

Present:

LORD BLACKBURN.
LORD WATSON.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THIS is an Appeal from a judgment of the High Court in a suit brought by the Respondents, who are infants, in the name of their guardian, against the Appellant, in the Court of Bhagulpore. The object of the suit was to prevent the Appellant from executing a decree which he had obtained against the Respondents. The case arose in this way: The Plaintiffs and Sheo Nundun and Hur Nundun were members of a joint Hindoo family, and joint proprietors of an ancestral family estate situate in the district of Bhagulpore and subject to the Mitácshará law. The suit in which the decree was obtained was brought on a bond, dated 21st of April 1870, for Rs. 16,348, executed by Hur Nundun on behalf of himself and as uncle and guardian of the present Plaintiffs. Hur Nundun was not at the time when he executed the bond the guardian of the present Plaintiffs, or at any time the manager of the estate; the elder brother, Sheo Nundun, after the death of Lalji, the father of the present Plaintiffs, was the manager. The suit in which the decree about to be executed

R 232. 125.—2/82. Wt. 5818. E. & S.

was obtained was brought against Sheo Nundun and the present Plaintiffs. The present Plaintiffs being minors, the suit was stated to be brought against Sheo Nundun as heir of Hur Nundun, and against the present Plaintiffs under the guardianship of Sheo Nundun, and Mussamat Ghuneshyam Konwari, mother and guardian of the minors. It turned out that the mother was not the guardian; that although a certificate of guardianship had been granted to the mother, that certificate had been set aside, and that the mother really was not the guardian. An *ex parte* decree was obtained against the Defendants; but the mother came in and asked to have the decree set aside upon the ground that no notice had been served upon her. The Court ordered that the case should go down for another trial, but upon the second trial the Judge who tried the case struck out the name of the mother and did not allow her to appear as the guardian of the infants. The suit was decreed against Sheo Nundun Persad and the Plaintiffs for the total amount of the bond, with interest. The Plaintiffs contend that that decree was not binding upon them, inasmuch as they were infants at the time, and were not represented by a guardian. On the other hand, it is contended that Sheo Nundan Persad, who was named as guardian in the suit, was their guardian, he being the co-proprietor and manager of the estate. It is clear that the manager of an estate, although he may have the power to manage the estate, is not the guardian of infant co-proprietors of that estate for the purpose of binding them by a bond, as Hur Nundun did, or for the purpose of defending suits against them in respect of money advanced with reference to the estate. Act 40 of 1858, passed for making better provision for the care of the persons and properties of minors in Bengal,

enacted, section 2, that, "except in the case "of proprietors of estates paying revenue to "Government, who have been or shall be taken "under the protection of the Court of Wards,"— which does not apply to this case,—"the care of "the persons of all minors (not being European "British subjects), and the charge of their pro- "perty, shall be subject to the jurisdiction of the "Civil Court." That shows that Sheo Nundun Persad, although he was a co-proprieter and manager of the estate, was not the guardian of the infants, who, according to the Act, were subject to the jurisdiction of the Civil Court. Then section 3 enacts that "Every person who shall claim "a right to have charge of property in trust for "a minor under a will or deed, or by reason of "nearness of kin or otherwise, may apply to the "Civil Court for a certificate of administration; "and no person shall be entitled to institute or "defend any suit connected with the estate of "which he claims the charge until he shall have "obtained such certificate." No certificate was obtained by Sheo Nundun Persad; and although it is stated that he was the guardian of the infants, he clearly was not the legal guardian, and had no right to defend that suit in their name. The decree in the suit, therefore, was not binding upon the infants. The Plaintiff in that suit attempted to execute his decree against the property of the infants. The judge of the First Court says:—"Sheo Nundun Persad's "entire ancestral property, and what he had "inherited after the death of Hur Nundun as his "legal heir, were sold for satisfaction of several "decrees." He had, therefore, no property upon which the decree could be executed; and therefore the Plaintiff in that suit attempted to execute the judgment which he had obtained against the minors by seizing their property in execution of the decree. The object of the suit under

appeal was to declare that the Plaintiff in the former suit was not entitled to execute the decree against the infants' property and to restrain them from executing it against that property.

Then it was attempted to show that, although the decree had been obtained against the infants without their having been represented by a guardian, still the suit was brought for a debt for which they were liable. Whether that could justify the execution of the decree it is not necessary now to inquire, because the Courts below went into the question whether the bond was given for a debt for which the infants were liable, and held that it was not. After stating all the facts of the case, the Judge says, "It would appear the debt was contracted by a "person who was not manager of Plaintiffs' "estate; that it was not for any unavoidable or "pressing necessity, or for any benefit of the "estate of the Plaintiffs; that the Defendant "did not inquire into these matters; and that he "obtained decree in a case wherein the Plaintiffs "were not properly represented. The decree "cannot, therefore, be enforced against the person "or property of the Plaintiffs."

The case was appealed to the High Court, and that Court came to the same conclusion with reference to the greater portion of the debt included in the bond, viz., that the money had not been borrowed on account of any necessity; that it had not been borrowed for any benefit to the estate; and that no inquiry had been made by the Plaintiff in the suit, at the time when he advanced the money, as to whether those advances were necessary for the protection of the estate or for the benefit of it; and the High Court therefore upheld the decision of the First Court to a certain extent. But then they found that a portion of the debt for which the bond was given was a debt which was due from Lalji, the

father of the present Plaintiffs; and they held that although the present Plaintiffs might not be liable upon the decree, they were bound to pay the debt due from their father. The debt which was due from their father was a sum of about Rs. 10,623. The High Court, however, did not award the whole of that sum against the Plaintiffs. After stating that the father was liable for the original debt to the extent of that amount, they say, "But the original debt due "from the Plaintiffs' family has been appor- "tioned amongst the several members, who "have now separated. The Plaintiffs, whose "share in the family property is one sixth, are "therefore liable to that extent for the amount "which was due from their father and the "other members of the family at the time of "his death." It is objected that the decision of the High Court was wrong in that respect, and that if the Plaintiffs were liable for the debt of their father they were liable for the whole amount of the debt. But it appears to their Lordships that the Plaintiffs were not liable for the whole debt for which their father and the other joint members of the family were originally liable, the debt having been apportioned amongst the several members of the family, who had separated, and several bonds given for the several portions of the debt. It appears, therefore, to their Lordships that the High Court was right, and that the infants were not bound to pay the whole of the debt for which the father was at one period jointly liable with the other members of the family, and that they were liable only for the father's portion of the debt.

Under these circumstances their Lordships are of opinion that the High Court came to a correct decision; and they will humbly advise Her Majesty that the decree of the High Court be affirmed. The Appellants must pay the costs of this Appeal.