

in those provisos, of the term "full assessment." The phrase "survey assessment" would have been sufficient and more definite. The introduction of both expressions in those provisos *prima facie* may suggest that they were not intended to be interchangeable. But if the full assessment be not the survey assessment, there is not any guide in the Court Fees' Act as to what the full assessment is; and Civil Courts would be left to conjecture in each case what should be fairly deemed a full assessment. For instance, if something less than Rs. 621-6-7 (the survey settlement) might be deemed a full assessment for the village of Piparla, there do not seem to be any legal data whereby the *minimum* that might be so regarded is to be fixed. The case would be one of *quot homines tot sententia*. The same difficulties of construction as to the expression "full assessment" existed in Act X of 1862, Schedule B, and Act XXVI of 1867, Schedule B, in the Special Rules for the Bombay Presidency. The term "remitted," used in proviso (3) of Act VII of 1870, section 7, clause v, sub-clause (d), appears to exclude this suit from that section, as we think that the remission thereby contemplated is an express remission, and not a mere difference in amount between the actual assessment payable by the *talukddar* and the survey assessment. The portion of the Court Fees' Act which seems most nearly adapted to such a suit as this is sub-clause (b) of clause v of section 7, inasmuch as the village of Piparla "forms" an entire estate paying annual revenue to Government, or forms part of such estate, and is "recorded" as such; "and such revenue is settled, but not permanently." That being so, the value must, for the purposes of the Court Fees' Act, be estimated at "five times the revenue so payable."

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PRIVY COUNCIL.*

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March 2 and 3

On appeal from the High Court at Bombay.

Guardian and ward—Inability of guardian to contract on behalf of infant ward so as to bind him personally—Effect of Act VI of 1862 (Bombay), Sec. 12, in regard to a charge upon a talukddari estate in the Ahmedabad District during the period of management.

A guardian cannot contract in the name of a ward, so as to impose on him a personal liability.

Act VI of 1862 (Bombay), "for the amelioration of the condition of talukddars in the Ahmedabad Collectorate and for their relief from debt," was intended to deal with all debts and liabilities which could possibly impose a charge upon the *talukddari* estate at the end of the period of management; when the estate was to be restored to the *talukddar* free of incumbrance, excepting the Government revenue. If debts amounted to more than the surplus of rents during the

* Present.—LORD WATSON, LORD FITZGERALD, LORD HOBHOUSE,
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management, of which the maximum period was twenty years, they were not to be paid.

A widow, as guardian of her infant son, the heir of a *tálukdári* estate in the above district, validly transferred villages, part thereof; and in the deed of transfer, to which her ward was by her as his guardian nominally a party, contracted to indemnify the purchaser in case the Government should claim and enforce a right to revenue upon the villages which she transferred as being rent-free. The deed purported to make both guardian and ward personally liable in this respect, and also charged the liability upon other parts of the *tálukdári* estate. The infant attained majority, and the estate was then placed under management, within Act VI of 1862. During the period of management the Government claimed and enforced payment of revenue upon the villages.

Held, that there was no personal liability on the part of the *tálukdár* created by the above; also, that if the charge on the estate had been validly made, it fell, at all events, within the terms of section 12 of Act VI of 1862, absolving estates from liability for debts incurred, not only before, but during the period of management.

APPEAL from a decree (1st March, 1883,) of the High Court, in part affirming, and in part varying, a decree (17th March, 1880,) of the Subordinate Judge of Ahmedabad.

The questions raised by this appeal related to the liability of the appellant, who was defendant in the suit, to answer, as well personally as out of the rents and profits of a *tálukdári* estate, upon a contract purporting to have been made on his behalf with the plaintiff by the *tálukdár's* mother, as his guardian, on his behalf during his minority.

By deed, in 1858, the mother and guardian conveyed villages, part of the *tálukdári* estate, in liquidation of debts chargeable thereon, to the father and grandfather of the plaintiff in this suit, as rent-free, agreeing that, in case the villages should be assessed to Government revenue, the guardian and ward should be liable to pay to the purchaser the amount, with costs; this liability being also charged upon other parts of the *tálukdári* estate. The villages were afterwards declared subject to assessment for revenue. The present respondent having obtained a decree upon the contract to indemnify him, this appeal questioned its correctness, both in regard to the law of guardian and ward, and to the provisions of Act VI of 1862 (Bombay).

The defendant's father, Sewsanji Rhemábhái, was *tálukdár* of

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Kuvar, in the district of Ahmedabad. He died in 1846, having become indebted in Rs. 21,001 to the plaintiff's grandfather, Ghulám Rasul, who obtained a mortgage of his "*vántá*" land, and in 1856 and 1858 obtained decrees against Bái Rambá, the widow of Sewsanji. She, to satisfy them, transferred to him two villages. The parties to the deed of transfer, dated 9th May, 1858, were the widow, who, as the appellant's mother and guardian, signed for him as well as herself, and the abovenamed Ghulám Rasul, with his son, Ghulám Mohidin. The deed contained the following contract by Bái Rambá for herself and her son :—

" We have absolutely sold to you the land of the above-mentioned *vántá* of Kuvar, which is rent-free (*nákra*), including the above-mentioned two villages. The Government, &c., have no right of any kind whatever over the same. And our heirs and our *karajdárs* (creditors) and neighbours or any other persons whatever have no right, claim, or interest of any kind whatever. And if any one should raise any claim or title to the same, it is all null. If any one should raise any obstruction or impediment to this *vántá* land and to the population of these two villages, we and our heirs are to be answerable. And if any claim or demand should be made by Government, &c., we and our heirs are to pay the same from our house amicably (*i. e.*) from our other property, which consists of *girás*, &c., and from our persons and from our inheritance, because we have absolutely sold this *vántá*, which is rent-free (*nákra*), including the two villages. Therefore, if the Government, &c., should make a claim in any way whatever, and resolve to levy *hak* (dues) of any kind whatever, and make a demand on you, and if you should have to pay (the same) and such costs as you may incur and such loss as you may sustain in giving an answer in respect thereof, all those moneys and the interest on those moneys we and our heirs are to pay to you. And on account thereof and in security for the same we have given in writing to you as security (*sáu*) for this deed our other *vántás* (*i. e.*) our *vántá* of the two villages of Manja Daran, Manja Rupavati Khareti, which are our *nákra* (rent-free) *vántás*, and besides these our other *girás*, and besides

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that our other property and *girás*, &c., which there are (*i. e.*) all those. You are to recover your money from the said property, &c., and from our persons."

In 1862 was passed Act VI of that year. The preamble recited that *tálukdári* estates in the zilla of Ahmedabad were then only held on leasehold tenure determinable by the Government, to whose notice it had been brought that many of them were indebted for money borrowed on the security of their estates; of which such as were of *tálukdári* tenure could not be lawfully charged, incumbered, or alienated. The Act empowered the Governor General in Council to make a declaration having the effect of vesting the management of a *tálukdári* estate in a Government officer for twenty years, during which period that officer, receiving the rents and profits of the estate, should meet the claims of the Government, the cost of maintaining the *tálukdár* and his family, and apply the balance to the expenses of management and the settlement of debts. The 8th section directed the officer to notify to creditors to make their claims within three months from such notice. The 9th section was as follows:—

"Any debt or liability of the *tálukdár*, other than as aforesaid, to which he is subject, either personally or in respect of the said landed estates, existing at the time of the said declaration by the Governor in Council not duly notified to the said officer or officers within the time and in the manner in the last preceding sections specified, shall and is hereby declared to be for ever barred: Provided always that upon proof being given to the satisfaction of such officer or officers of the inability of the claimant to have complied with the provisions of this and the last preceding sections, it shall be lawful for the said officer or officers, to entertain and admit such claim within the further period of nine calendar months from the expiration of the above-mentioned period of three months."

The 16th section enacted that such management should in no case extend beyond twenty years from the publication of the declaration vesting the estate, and that on its cessation, at or before the expiration of that period, all debts and liabilities, except those

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to Government, existing at the time of such declaration, and comprised in a scheme for the "payment of the *talukdár's* debts to be under the 10th section prepared by the managing officer and approved by Government," should be deemed to be fully discharged and satisfied.

And the 20th section declared that, on the expiration of the period of management, the *talukdár* should be the absolute proprietor, subject to land revenue.

The 12th section, to which special reference is made in the judgments of the Courts below, related to debts and liabilities "incurred" by the *talukdár* during the period of management, and was as follows :—

"Any debt or liability, except as hereinbefore excepted, which may be incurred by the *talukdár*, either personally or in respect to his said landed estates or any part thereof, during the period of such management as aforesaid, shall not be enforceable in any manner whatever, either during or subsequently to such period of management, against his said landed estates or any part thereof, and it shall not be competent for the *talukdár* during the said period of management to charge, incumber, sell or alienate his said landed estates or any part thereof, and such charge, incumbrance, sale or alienation shall be null and void."

This appellant attained the age of sixteen years in February, 1863; and on the 20th August of that year a declaration was published by the Governor in Council, under the Act, directing the Talukdári Officer to take charge of the appellant's *táluka* of Kuvar.

This was accordingly done, and on the 13th October, 1863, that officer published the notice, directed by the 8th section of the Act, calling on all persons having claims on the *talukdári* estate of Kuvar to notify them to him within three calendar months, on pain otherwise of their being barred.

Ghulám Rasul, or Ghulám Mohidin, did not within that period give notice of any claim or liability.

In March, 1868, this appellant sued Ghulám Rasul and Ghulám Mohidin to recover possession of the villages, on the ground that

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his mother had no authority to sell them during his minority. The High Court, however, on the 15th July, 1870, affirmed a judgment dismissing the suit, on the ground that the sale was *bonâ fide*, having been for the benefit of the minor. While that suit was pending, and in the course of the years 1870-71, the Collector of Ahmedabad assessed the villages at Rs. 2,000 *per annum* for revenue, with Rs. 125 for local cess. To establish his right to hold them rent-free, Ghulâm Mohidin, his father being then dead, sued the Collector in 1872, but failed to prove them rent-free, except as to *bighâs* 755½. In that suit, neither this appellant, nor the Tâlukdâri Officer, were made parties.

The present suit (13th July, 1876,) was brought by the sons of Ghulâm Mohidin to recover, as a charge on the *tâlukdâri* estate in possession of the appellant, and from him, as being personally liable, the sum of Rs. 28,998-15-11. That amount was made up of Rs. 12,000 paid by their father for Government revenue, Rs. 750 for local cess, and the residue for costs incurred in the two suits above mentioned, and interest on all the items of claim.

The defendant (now appellant) contended that he was not bound by the contract purporting to have been made on his behalf, and he relied on Act VI of 1862.

The Subordinate Judge (17th March, 1880,) held that the defendant was by the former decision against him (January, 1875,) barred from disputing the validity of the deed of the 9th May, 1858, and that "its terms were in every way binding on the vendor." That the plaintiffs were entitled to recover under the contract what had been paid for the Government revenue, but not the interest. The Judge held that the sum of Rs. 12,750, from the defendant personally, and from his moveable property, was recoverable under the contract of 1858, but that the *tâlukdâri* estate was not chargeable.

On appeal, the High Court held that the sum claimed in respect of the local-fund cess, imposed under Act III of 1869 (Bombay), was not recoverable. This tax was not of the same kind as the land revenue, and was not within the contemplation of the contract entered into in the deed of 1858.

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Upon the question whether the claim was barred by the operation of Act VI of 1862, the judgment was as follows:—

“It is true that the main object of that Act was to relieve such of the *talukdars* of Ahmedabad, as are, under its 1st section, brought under the operation of the Act, from debt. But it is not quite exclusively devoted to that object. It also indicates an intention that their creditors should, to a certain extent at least, if not in full, be paid. This is apparent from sections 8, 9, 10 and 11. The 8th, 9th and 10th sections lead us to conclude that the debts and liabilities intended to be dealt with under the Act are such as might be the subject of a claim under section 8. Such a claim should ordinarily have been sent in within three calendar months after the notification mentioned in section 8, or, under special circumstances, within the further period of nine calendar months from the expiration of the three calendar months. The defendant Raisangji and his estates were, by a declaration under section 1, brought under the operation of the Act before the 20th August, 1863. It is admitted that the *non-vántá* land, which passed to the vendee under the deed of sale of 1858, was not assessed until *Samvat* 1927, (A.D. 1870-71), some six or seven years after the issue of the notification under section 8. Therefore the plaintiffs, or their ancestor, had not at the time of the notification, or at any time within twelve months afterwards, any claim which they could have preferred to him against Raisangji or his estates, or which could have been included by the Settlement Officer in the scheme for the settlement of the defendant Raisangji's debts and liabilities to be prepared by that officer and submitted to the Governor in Council, or which could be described, in the language of section 16, as existing at the time of the declaration made under section 1. The claim under the covenant in respect of land assessment was only then, at the utmost, a contingent claim.”

The Court then postponed giving judgment, that the *Talukdári* Settlement Officer might be made a party to the suit; as, without this, they preferred not to make an order affecting the estate.

The *Talukdári* Officer having been made a party, the case came up again for argument before another Division Bench

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(Sargent, C. J., and Melvill, J.,) which, on the 1st March, 1883, delivered the following final judgment:—

“We concur in the opinion expressed by Westropp, C. J., and Birdwood, J., that the ‘liabilities’ with which the first ten sections of Bombay Act VI of 1862 were intended to deal, were liabilities which, at the time of the declaration mentioned in section 1, were not merely contingent, but could be made the subject of an immediate claim. Such was not the liability which the plaintiff now seeks to enforce. The only remaining question is, whether it is such a liability as is contemplated in section 12. We think that it is not. A careful consideration of the whole section leads us to the conclusion that the word ‘incur’ is used in its proper sense of ‘run into,’ and implies an act done by the *talukdār* during the period of the management. The section seems to be intended as a warning to money-lenders that, if during the period of management they lend money to the *talukdār*, they must be content with his personal security. The case with which we have now to deal, *viz.*, that of a debt or liability to which the *talukdār* has become subject during the period of the management, in consequence of an event which could not be foreseen with certainty at the commencement of that period, is a case which does not appear to have presented itself to the mind of the Legislature, and must be treated as a *casus omissus* in the Act. Under this view there is nothing in the Act to prevent us from giving effect to the contract between the parties, and we, therefore, enter judgment for the plaintiff for the sum of Rs. 12,000, with interest at 9 *per cent. per annum* from the date of each payment composing that sum up to date of this judgment, and 6 *per cent.* to date of execution, the amount to be recovered from the defendant Raisangji’s property generally, as well as from him personally.”

The defendant having preferred the present appeal against the above judgment,

Mr. R. V. Doyne, for the appellant, contended that the contract to indemnify the purchaser was not binding on the appellant, upon whom his guardian could not impose a personal liability. The charge, also, on the *talukdār* estate was inoperative, being

barred as a claim against the estate, by the effect of Act VI of 1862, with special reference to section 12. The High Court had incorrectly construed this Act, unduly limiting its scope.

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Mr. J. D. Mayne and Mr. L. Wilkin, for the respondent, argued that as the continuance of the villages to be rent-free was an essential element in a contract of purchase, a contract which under the law as declared in *Hunoomanpersaud Panday v. Mussumat Baboore Manraj Koonweree* ⁽¹⁾ the guardian of the minor had power to enter into on his behalf, the contract to indemnify was one binding on the infant; for whose benefit, also, it had been made. The charge upon one part of the estate was a direct benefit to another part; for, had not the assumption, incorrectly no doubt, been made that the villages were rent-free, more land would have had to be transferred in satisfaction of the original debt. Liability to this claim might be regarded as the result occasioned by the proportionately less amount of land having been transferred. Again, as regards the effect of Act VI of 1862, this liability was not one to which that Act was applicable, inasmuch as it was a liability which had to mature, and was not measurable in money when the management began; at which time, indeed, it might never have come into existence. By no act of the *talukdar's* was it incurred, and it was altogether outside the contemplation of the Act.

It was also argued for the respondent that the appellant was stopped by the former litigation in 1875 regarding the main contract of transfer; and the latter having been maintained, this liability, with everything that was of the essence of that contract, should have been then contested, or else must be taken to have been maintained along with it. The Court, in affirming the transfer, affirmed every part of that transaction on which it was based.

Mr. R. V. Doyne was not called upon to reply.

Their Lordships' judgment was delivered by Lord Hobhouse.

In this case the appellant, who was the defendant in the Court below, is the *talukdar* of Ahmedabad; and the plaintiff, who is the respondent—there has been some change of title

(1) 6 Moore I. A., 393.

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since, but throughout this judgment the plaintiff will be referred to as a single person—brought a suit to enforce a covenant which was entered into in the year 1858 by the defendant's mother and guardian on his behalf when he was a boy eleven years old. That covenant arose in this way. The plaintiff was a creditor of Sewsanji, the defendant's father, and the debt appears to have been one for which the *tálukdári* family estate might be made liable. Under those circumstances, in 1858, an account was stated of the amount due to the plaintiff, which was found to be Rs. 35,001. In lieu of enforcing that debt by decree and execution, he took a conveyance from the mother and guardian, Báí Rambá, of a certain extent of the family land—the exact extent does not matter now. The validity and propriety of that transaction was challenged by the defendant after he came of age. It was the subject of a suit in the year 1868, and the result was to establish that the transaction was a valid one *boná fide* entered into by the guardian, and within the range of her powers. There is, therefore, no question in this suit as to the propriety or expediency of the sale of 1858; but the question is as follows. The family claimed to hold the conveyed land rent-free, and the guardian conveyed it as rent-free, and their Lordships must assume that it was valued on that basis. The purchaser was not content with the assertion of the family that in point of fact they paid no rent, though that seems to have been the fact, but he took a covenant from the guardian to indemnify him in case the Government should enforce their claim to receive rent out of the estate, and that covenant is framed so as to bind both the guardian and the infant, who was nominally by his guardian a party to the deed. That the covenant bound the guardian there can be doubt; but the question is, whether it could bind the infant *tálukdár*. Unfortunately neither of the Courts below addressed themselves to this question, because they held that it had been already decided by the decree made in the prior suit.

Looking at the prior suit, their Lordships find that it was a suit to impeach the whole sale, on the grounds, first, that it was fraudulent, and, secondly, that it was beyond the powers

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of the guardian and manager. No question whatever was raised as to the validity of the guardian's covenant as against the infant. In fact, it is impossible that that covenant could have come into question, excepting as a subsidiary argument to show that the deed was an improper one, and then the curious result would be this: That the more clearly that covenant was void in law, the less would be the force of the argument founded upon it. In point of fact, neither in the pleadings, nor in the decree in that suit can it be discovered that anybody paid any attention to the point which is now under consideration. Their Lordships, therefore, must hold that to be an open point in the present suit.

Now it was most candidly stated by Mr. Mayne, who argued the case on behalf of the respondent, that there is not in Indian law any rule which gives a guardian and manager greater power to bind the infant ward by a personal covenant than exists in English law. [In point of fact, the matter must be decided by equity and good conscience, generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances.] Their Lordships are not aware of any law in which the guardian has such a power, nor do they see why it should be so in India. They conceive that it would be a very improper thing to allow the guardian to make covenants in the name of his ward, so as to impose a personal liability upon the ward, and they hold that in this case the guardian exceeded her powers so far as she purported to bind her ward, and that, so far as this suit is founded on the personal liability of the *talukdar*, it must fail.

That, however, is not the whole of the covenant. By way of security for its performance, the deed gives a charge upon the other *talukdari* estates, some specified *vantā* lands and *girās* lands, and the other property generally. Mr. Mayne reasoned on that in this way. He said the land was valued as rent-free; if it had been valued as subject to rent, the creditor would have insisted on having so much more of the land; therefore, family land is saved by valuing, as rent-free, the land actually taken, and it was not only reasonable, but within the compass of the

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guardian's powers, to deal with the remaining family land of which she was manager, so as to make it a security to the creditor against his loss by the Government exacting rent. The argument is one which is worthy of great consideration ; but their Lordships do not wish to pronounce any opinion on it, or to subject it to any minute examination, because, assuming it in favour of the respondent to be a sound argument, they are clearly of opinion that, so far as regards the *tálukdári* estate—and that is now the only part of the case which they have not dealt with—an answer to it is to be found in the terms of the Ahmedabad *Tálukdári* Act, (Act VI of 1862).

In the opinion of the Subordinate Judge, the defendant in the suit was liable personally, but his estate could not be charged on account of the terms of the 12th section of the *Tálukdári* Act. In the opinion of the High Court, he was liable both personally and as regards the *tálukdári* estate, and their decree is founded upon that opinion.

The object of the *Tálukdári* Act was to maintain the *status* and order of *tálukdárs*, which the Government, as a matter of policy, thought it important to maintain. They were a class of gentlemen who had been living beyond their means ; they had got very much embarrassed, and they did not perform those political objects which the Government thought of great importance to have performed in various parts of the country. Many Acts of the kind have been passed relating to different parts of the country, and all with the same object. The method adopted was, where a *tálukdári* estate had reached a certain pitch of embarrassment, to make a declaration placing it under the management of an officer who was to manage for a term of years, which might extend to twenty years. During that time he was to maintain the *tálukdár* and his family, to pay all the expenses of the management, and then to apply the surplus to liquidate or settle the debts of the *tálukdár*, in liquidation or settlement of the debts and liabilities to which at the time of the declaration the *tálukdár* was subject, either personally or in respect of his landed estates. But at the end of the twenty years the estate was to be restored to the *tálukdár* absolutely, free of incumbrance.

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excepting the Government tax. If the debts amounted to more than the surplus rents during the term would suffice to pay, those debts were not to be paid at all. It may have been a very arbitrary way of dealing with creditors, but that was the policy of the Act, and in construing the Act it must be remembered that it recites that the *tálukdári* estates could not be lawfully charged, incumbered, or alienated. It is said that that recital was wrong. The High Court state it to be wrong, and they state, moreover, that it was put in merely as a justification to the Government for dealing in the summary manner in which they did with the creditors' rights. All that may be true. It may be true that the statement of the law is wrong, and the motive assigned may be true, for aught their Lordships know. But, supposing it is, it must be remembered that that was the idea in the mind of the Legislature, and all the provisions affecting creditors must be construed with reference to that idea, under which every benefit given to the creditor out of the *tálukdári* estate would be in the nature of an indulgence, because he got something which he could not enforce by law.

Before examining what the enactments actually are, it would perhaps be convenient to state the order of events. The defendant attained his majority in August, 1863, and the order placing his estate under management was made very soon afterwards. The exact date does not appear, but it was towards the end of 1863. The Government claimed rent against the plaintiff in respect of the estate that he had bought in the year 1871, and this right to rent was finally established by decree of the High Court about the year 1875. At all events, the claim was made and fully established during the period of management of the *Tálukdári* Officer, so that the dates lead up to this result, that, owing to the liability which was incurred in the deed of 1858, the plaintiff had a claim measurable in money against the defendant, perhaps as early as the year 1871, but at all events between then and 1875. It is not necessary to be more exact in the dates.

Now what does the Act provide? The preamble and the first nine sections deal with what they call existing debts and liabili-

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ties, and they deal with them in a very summary way. All processes by which any of them could be enforced are stopped, and, in lieu of those processes, the creditors have only the indulgence, which has just been mentioned, of receiving the surplus rents for a term of years. Section 9 enacts that "any debt or liability of the *tālukdār* other than as aforesaid,"—(those words of exception may be dropped out, for they only refer to Government claims)—"to which he is subject, either personally or in respect of the said landed estates, existing at the time of the said declaration by the Governor in Council"—(that is, the order subjecting the estate to management)—"not duly notified to the said officer or officers," within a time specified, "shall and is hereby declared to be for ever barred." Then section 12 says that any debt or liability, with the same exception, "which may be incurred by the *tālukdār*, either personally or in respect to his said landed estates or any part thereof, during the period of such management as aforesaid, shall not be enforceable in any manner whatever, either during or subsequently to such period of management, against his said landed estates or any part thereof." Here we have an Act designed to set up the order of *tālukdār*s in an unembarrassed state, and to restore them their land within a period of, at most, twenty years, and dealing first with debts and liabilities existing at the commencement of the period of management, and, secondly, with debts or liabilities incurred during the period of management. In such an Act their Lordships think it impossible to come to any other conclusion than that it was intended to deal with all debts and liabilities which could possibly impose a charge on the *tālukdār* at the end of twenty years, and that to strain words from their literal ordinary meaning for the purpose of showing that the liability now in dispute is one which does not fall within the compass of that Act, is an erroneous construction of the Act.

The High Court have given the plaintiff a decree on this ground, that the debt that he claims does not fall into the first class of debts and liabilities, because it was not existing when the period of management commenced; and that it does not fall within the second class, because it was not incurred during the period of

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management. The result is this, that because when the management commenced there happened to be no means of reducing the liability into a claim measurable in money, and because the *talukdar* did not, during the period of management, do some voluntary act to incur a fresh liability; therefore at the end of twenty years a great burden remains upon the estate. Their Lordships think that is not only contrary to the policy of the Act, but a departure from the obvious literal plain construction of the words. It may be true, and their Lordships think it is true, that when the management commenced, the liability was not one that was measurable in money. It may not have been the subject of a claim against the estate, though that point would seem to depend on the nature of the rules made by the Governor in Council for the liquidation of debts. But it does not follow at all that it was not a liability which section 9 was calculated to bar. All liabilities were to be notified; and even if there were any so situated that the creditor could get nothing, the intention of the Legislature to bar every liability that existed then is, as their Lordships think, a plainly expressed intention.

Then, as to section 12, the debt must have been incurred at some time; otherwise it could not be recovered. When was it incurred? According to the reasoning of the High Court, it never was incurred. There was no debt when the period of management commenced, and no debt was incurred afterwards, because there were proceedings, to which the *talukdar* was no party, which converted the liability into a money claim. Their Lordships think that that is not the meaning of the word "incurred." It is not the common meaning of the word "incurred." Incur means to run into, no doubt, but it is constantly used in the sense of meeting with; of being exposed to; of being liable to; and in that sense the *talukdar* did incur debt. The liability was inchoate in the year 1858, and it reached its maturity some time between 1871 and 1875. If it was not a liability existing in 1863, when the period of management commenced under section 9, then it must be either a debt or liability incurred during the period of management. It is not necessary to decide under which section the case falls. Their Lordships incline to think that it falls under section 9, but they are quite

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clear that if it does not fall under section 9, it must fall under section 12. In either case the Act is sufficient to relieve the *talukdārī* estate, which is the only point in question at this moment.

The result is, that their Lordships think that the High Court ought to have reversed the decree below, and to have dismissed the suit with costs, and they will humbly advise Her Majesty to make that decree. The respondent must pay the costs of this appeal.

Their Lordships are sorry to find that this record contains what they so often observe upon, namely, an enormous mass of matter which could not by any possibility be of use upon this appeal. They would wish to call the attention of the Courts in India again to that circumstance, in the hope that they may find some remedy against that which is a serious mischief in increasing costs.

Appeal allowed.

Solicitors for the appellant:—Messrs. *Walker and Whitfield.*

Solicitors for the respondents:—Messrs. *Thomas and Hick.*

ORIGINAL CIVIL.

Before Mr. Justice Farran.

KESSOWJI TULSIDAS AND ANOTHER, (PLAINTIFFS), v. HURJIVAN
MULJI AND SHAMKUVARVAHU, (DEFENDANTS).*

Guarantee—Consideration—Guarantee on condition of not taking criminal proceedings—Compounding felony.

S. gave to the creditors of H. a guarantee for the payment of the debts due to them by H. As a consideration for this guarantee the creditors were to abstain from taking criminal proceedings against H. for fifteen days, and by implication were to abstain from taking such proceedings altogether if the said debts were paid within that time.

Held, that such a guarantee could not be enforced by the creditors.

A man, to whom a civil debt is due, may take securities for that debt from his debtor, even though the debt arises out of a criminal offence and he threatens to

*Suit No. 499 of 1886.

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