

**(1910) 11 AHC CK 0009**  
**In the Allahabad High Court**  
**Case No : Second Appeal No. 202 of 1910**

Nathu and Others

APPELLANT

Vs

Kundan Lal

RESPONDENT

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**Date of Decision :** 08-11-1910

**Acts Referred:**

**Citation :** (1910) 11 AHC CK 0009

**Final Decision :** Dismissed

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### **Judgement**

Richards and Griffin, JJ.—This and the connected appeal No. 201, arise out of suits brought on foot of two mortgage bonds. The bonds were made by the father of a joint Hindu family and the property pledged was ancestral property, A number of defences were raised, and, amongst others, defences that the bonds were discharged and that they were executed by a father without necessity and not for family purposes. The court of first instance found against the plaintiffs on both these issues. The learned Additional District Judge has reversed the decree of the court of first instance. He finds that the bonds were not paid off and after referring in his judgment to two witnesses who are attesting witnesses of the bonds, says as follows.--"Their evidence is sufficient to show that the money was obtained for a legal necessity, for the enlargement of family estate by exercising rights of pre-emption. It was entirely the interest of the family, even though there is no legal proof that the effect was given to this purpose. I hold that the debts were incurred for legal necessity.'" This judgment is not very satisfactory. The court of first instance had given somewhat substantial reason for holding that it had not been proved that the bonds were given for family necessity. He has said that the allegation was that the money was advanced for pre-emptive decrees, but that no such decrees had been filed. It would have been more satisfactory if the learned Additional District Judge had gone into these matters and given his reasons for over-ruling the court below. In the present case it is not even alleged in the bond that the consideration was money advanced to acquire property preempted. We feel, however, that in second appeal we must accept the judgment of the learned Additional District Judge as a finding that the

money was borrowed on two bonds for the purpose of complying with the terms of one or more pre-emptive decrees. We think that in the absence of evidence to the contrary it must be assumed that these decrees were complied with and that the family acquired the property, the subject-matter of the pre-emptive decrees, by means of the money that was advanced on foot of the bonds. A pre-emptive decree provides that the decree-holder shall acquire the property therein mentioned provided he pays the purchase money within a time fixed. If he does not do so, his suit is to be dismissed with costs. It is very hard to say that such a decree with the liability that is attached to it is not a debt. It cannot be urged now that a creditor who has made honest and reasonable inquiry as to the object of the loan is bound to see to the application of the money he advances, and therefore the absence of a finding that the money advanced on foot of a bond was actually applied to the preemptive decrees is not fatal to the plaintiff's case. The appeal, therefore, fails and is dismissed with costs.