

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Baboo Lall v. Luttoo Ram, from the High Court of Judicature at Agra, North Western Provinces, Bengal; delivered 15th June 1872.*

---

Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

---

SIR LAWRENCE PEEL.

THIS was a suit by a sub-contractor against a contractor with the Government for work and labour done. The defence was that the Defendant had been fully paid, and indeed overpaid. The questions raised were all questions of fact, and those questions of fact have been found in the Plaintiff's favour by the Court of first instance, and by the Appellate Court in India.

Under these circumstances the rule of their Lordships not to interfere with a decision of two Courts in India on a question of fact at all events *prima facie* applies.

It is, however, contended that this case does not fall within the rule, or is taken out of the rule upon the following grounds: First, it is said that certain documents, which purport to be an allowance of the Plaintiff's accounts by one Mahomed Khan, the overseer of the Defendant, were improperly received in evidence. The objection to their reception is that Mahomed Khan was not shown to have had any authority from the Defendant to make a statement of accounts binding upon him. It is to be observed, however, that this defence was not taken in either Court. The sole question raised in the Court below was

this, whether or not the documents referred to were in point of fact signed by Mahomed Khan, and the Defendants put Mahomed Khan in the box to deny his signature. The Judge, however, disbelieved him, and believed the witnesses who affirmed the documents to be genuine, and now it is not contended but that that finding is right. It is further to be observed that in the reasons given for the Appeal which was preferred to the Superior Court in India, none is to be found to the effect that Mahomed Khan had not authority from the Defendants to bind them, but the same issue is again raised, namely, whether or not Mahomed Khan actually signed these documents? If the question of Mahomed Khan's authority had been raised, then it is possible that the Plaintiff might have been prepared with evidence for the purpose of supporting that issue, but his attention was not called to that, and it certainly would appear to have been understood by the Courts, and it probably was understood by both sides, that if in fact Mahomed Khan signed these documents he had authority to sign them on the part of the Defendants, for whom undoubtedly he was acting, and whose overseer he was.

Secondly, it is contended that there was a miscarriage in the rejection of a document put in by the Defendants. In order to contradict the rate of charges which are allowed by Mahomed Khan in these documents which must now be taken to be genuine, the Defendants put in what they declared to be the original agreement, under which these works were executed, whereby a different rate of charges is agreed upon; and they contended that that being taken as the rate of charges the Plaintiff had been paid in full. Whether that be so in point of fact, supposing the document proved, does not distinctly appear. The Plaintiff's case on the other hand was that the original agreement had been fraudulently abstracted by Mahomed Khan, and that the docu-

ment produced and sworn to by him, and one or two other witnesses was a fabrication. The Judge below has adopted that conclusion. Undoubtedly the Defendant called one or two of the witnesses attesting that document to prove its genuineness, and they gave evidence to that effect. But it appears that the document purported to be attested by Mr. Brown, an Englishman; the Defendants called two witnesses to prove his signature: one of them gives no clear evidence on the subject, and the other, Captain Whish, gives his opinion that the signature which appears in that document as that of Mr. Brown is not his. It is to be observed that assuming the accounts signed by Mahomed Khan to be correct, which they must now be assumed to be, and that Mahomed Khan was the agent of the Defendants, and therefore not probably disposed to allow the Plaintiffs a higher rate of charges than they were entitled to, undoubtedly some suspicion is raised against a document which places the rate of charges on a different footing from those agreed to by Mahomed Khan. On the other hand an observation was made by the learned counsel for the Appellants entitled to a great deal of weight, that it does not appear that the Court below called upon the Plaintiff, or that the Plaintiff put himself forward, or his witnesses to prove that this document was false. Undoubtedly this issue can scarcely be said to have been tried quite satisfactorily, and if this board were sitting as a Court of First Appeal from the decision of the Court below, it is possible, that their Lordships might have thought it necessary to remit the case for further investigation. But it is to be observed that this finding of the Court below upon the question of fact that this agreement put in by the Defendants was a fabrication is in substance, though not in precise terms, affirmed by the judgment of the Court above. The Court above, dealing generally with the evidence, say that they see no reason to believe

the Defendant's witnesses more than the Plaintiff's, and in fact did not think it necessary to interfere with the judgment of the Court below, which proceeded upon the general ground that the Plaintiff's case was substantially correct and that the Defendant's case was a false one. It must be assumed now as clear that the Defendant's case as far as regards the signature of those documents by Mahomed Khan, was entirely a false one.

But then, thirdly, it is said that even assuming these documents, purporting to be signed by Mahomed Khan, to be genuine, and putting aside the agreement there was no evidence whatever on the part of the Plaintiff of the rest of his demand. If that were so, the question would become one of law. Their Lordships, however, without saying that the evidence on this subject was of a satisfactory character, are unable to say that there was no evidence upon which the Court below was justified, if it thought fit, in acting with respect to this part of the claim.

Three witnesses are called, who speak in general terms, certainly, not in a manner most satisfactory, to the whole of the work which the Plaintiff claims as having been done and to the prices which he charges for it. And it is to be observed that, as far as their Lordships understand, the actual measurements are not disputed. It is further to be observed that the Judge of the Court below appears to have come to a conclusion, as a question of fact, that the Plaintiff's charges were reasonable, and he refers to a comparative account prepared in his office showing the amount of profit the Plaintiff would derive, and therefore having some bearing on the reasonableness of the charge. It would appear that the Judge of the Court below did enter into some investigation of this case and that some account was prepared, which is not before their Lordships. It would also appear that Mahomed Khan himself in his evidence speaks of some work to the value



of upwards of Rs. 5,000 done by the Plaintiff before December, and it is only after December that his certificates apply.

Under these circumstances, their Lordships are not able to say that there was no evidence upon which the Court below was justified in coming to the conclusion that the Plaintiff had made out the whole of his demand, and inasmuch as the High Court have affirmed the judgment of the Court below on what, after all, does appear to their Lordships to resolve itself into a question of fact, their Lordships have come to the conclusion that this Appeal must be dismissed.

