

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lalla Sheoparshad v. Juggernath, from the Court of the Judicial Commissioner of Oude; delivered March 20th, 1883.

Present:

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THIS is a suit instituted on the 30th May 1879 by Lalla Sheoparshad, a banker of Lucknow, who carries on business through his brother-in-law, Paras Ram. The Defendant is one Juggernath Parshad, described as "the son and representative of the late Deendial," also of Lucknow. The plaint sets forth that there were commercial transactions between Deendial and Sheoparshad, and that Deendial died on the 23rd November 1878. Then it states that on the 22nd or 23rd day of December 1878 the Defendant Juggernath, then his father's administrator, called upon the Plaintiff and received a copy of the account contained in the Plaintiff's books, showing Rs. 16,378 to be due to the Plaintiff from the late Deendial. The gist of the suit is set forth in paragraph 4 of the plaint, and is as follows:—"That on the 31st of January last"—that is, 1879—"the Defendant, accompanied by Budree Dass and Kullo Mull, came to the Plaintiff's house at Lucknow, and in the presence of"—a number of persons named—"admitted the said balance of Rs. 16,378 to be due from his father, but begged that Plaintiff would forego Rs. 1,378; and in consideration the Defendant offered to

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“ execute a bond for Rs. 15,000, charging all
“ his immovable property with the payment of
“ Rs. 15,000, bearing interest at 6 per cent.
“ per annum, payable by annual instalments of
“ Rs. 3,000; to which proposals the Plaintiff
“ agreed, and the Defendant promised to execute
“ and register the said bond within two days
“ from that date.” The breach alleged is that
the Defendant has not executed nor delivered
the promised bond. The prayer of the plaint is
for the sum of Rs. 15,000, with interest thereon,
at 12 per cent., from the 31st January 1878 to
date, and future interest to the date of liquida-
tion. Now, that is a plaint in a very peculiar
form,—it alleges an agreement and the breach
of an agreement; it does not pray specific per-
formance of the agreement; it does not fall back
upon the state of things prior to the breach of
the agreement, viz., the current account between
the Plaintiff and Deendial and the debt due from
Deendial on the footing of that account; but it
takes a portion of the alleged agreement, namely,
an admission that Rs. 15,000 is due, and, alleging
that the Defendant has not given the promised
security for that Rs. 15,000, prays for immediate
payment of it, with the usual amount of interest.

On the part of the Defendant there was no
written statement, but there was the usual hearing
of pleaders before issues were settled, and the
pleader of the Defendant puts in this defence:
First he says that Deendial's books show that he
was the creditor upon the account current in
a sum of somewhat upwards of Rs. 9,000. Then
he denies the allegations in paragraph 4 of the
plaint, which is the one that has just been read.
He says:, “ No such admission was made by
“ Defendant. Defendant did not go to Plaintiff's
“ house in Lucknow. No offer to execute bond
“ for 15,000 was made nor any compromise.
“ What took place was that, on comparing the

“ respective accounts, the differences were found
“ to be so great that no settlement was made.”

Now there being that positive denial of the agreement or the admission on which the Plaintiff relied, it might have been expected that the Plaintiff would have fallen back, at least as an alternative, upon the foundation of the case, viz., that, on the account current between himself and Deendial, Deendial was indebted to him. But he does not do that. Instead of doing that, he adduces evidence to prove the admission of the debt which is set forth in the plaint. The evidence for the Plaintiff consists of his own evidence, that is, the evidence of Paras Ram, who throughout acts as the person substantially interested, and of five other persons. No attempt is made throughout the whole of the evidence to prove that any debt was due from Deendial to the Plaintiff; the whole gist of the evidence is to show that there were negotiations between the Plaintiff and the Defendant after Deendial's death, and that those negotiations culminated in a meeting of the parties on the 31st January 1879, at which the alleged admission and the alleged agreement were made. The principal and most important witness for the Plaintiff is one Gurdial, who is a vakil of the Court, and who states that he was called in by a friend or colleague of the Defendant, named Badridas, to settle the matter; not that he had any authority to settle the matter, but he was asked to attend a meeting, and he did attend the meeting of the 31st January at which the alleged things were done. Now to all that there is a positive denial on the part of the Defendant. Badridas says that he had nothing whatever to do with the settlement of accounts between the Plaintiff and the Defendant; that he never went with Gurdial and others to the meeting, and to the best of his knowledge the Defendant never promised to pay Rs. 15,000 to the

Plaintiff. Another witness, Kullumull, who is alleged to have been present at the meeting when the agreement was made, states that "no accounts between Plaintiff and Defendant took place before me in Plaintiff's house. On 31st January 1879, Gurdial did not bring me and Bodridass and Juggernath there." Then he says, "Deendial's accounts were compared by me and Ganeshi Lal," who appears to have been some connection of the Defendant's. "Some Rs. 25,000 difference were found. I and Ganeshi Lal went in December to Sheoparshad's house, to Paras Ram, during last Christmas holidays. We asked him to compare accounts, and they were compared a little; but even these few items differing, Paras Ram got angry, declaring his accounts to be correct, ours wrong. This quarrel about the accounts has never been settled."

Now it was to be expected, there being this difference between the witnesses who gave oral evidence, that something would appear in the books of the Plaintiff to show what took place. He alleges a formal settlement of accounts, and a formal agreement for discharging the balance. It is almost inconceivable that a banker, or any man of business, should have made no contemporaneous entry of such a very important transaction. But the books of Paras Ram are produced, and no entry can be found excepting entries which were made on the 26th May 1879 for the purpose of settling the plaint in this suit. When Paras Ram is asked for an explanation of that circumstance all he can say is this:—"The entry was not till May, although the balance was settled to be due in January, because I was waiting to get the bond to enable me to close the account, namely, in the name of Ram Ratten Dindial, and open a new one in that of Jagarnath. I could have commenced a new

“ account with Jagarnath on getting the bond,
 “ even if I had entered the balance on the
 “ 31st January. I did make a mistake in not
 “ getting Jagarnath to sign an entry made on
 “ the 31st January. I can give no reason for
 “ the omission. Have brought Sheoparshad’s
 “ books. There is no entry in the day book of
 “ 31st January 1879.” Neither in the day book
 nor in the ledger is there to be found any entry
 until we come to the 26th May 1879. Then in
 cross-examination he is asked whether it is not
 the practice to enter the date of the transaction
 in the day book. He says, “ When the entry is
 “ not made on actual date of the transaction it
 “ is the rule to enter that date in the body of
 “ the entry.” But in the body of the entry
 made on the 26th May no date appears.

The only other explanation given is that by
 Gurdial, who says:—“ It was urged,”—he does
 not say by whom, but—“ it was urged that the
 “ balance of 15,000 should be entered in books
 “ and signed. I pointed out that, if no instal-
 “ ments were entered by which balance should
 “ be defrayed, one anna stamp would suffice;
 “ but if instalments were entered, stamp of bond
 “ would be necessary. Kunhi Lal,”—who was
 acting for the Plaintiff, “ then said, ‘ We can
 “ ‘ enter the balance in our books, and Jagar-
 “ ‘ nath can give us his bond.’ Then Jagarnath
 “ promised his bond in three days. Meeting
 “ then broke up.”

Now that is the whole explanation why there
 was no contemporaneous entry made. It is
 obviously no explanation at all. The plain course
 of acknowledging in writing the settlement of
 the account said to be settled could not possibly
 interfere with the opening of a new account with
 Juggernath, or affect the stamp duty ultimately
 payable on the bond to be given. The omission
 to make an entry at the proper time is a cir-

cumstance bearing very strongly against the Plaintiff's contention, and leading to the inference that the Defendant's witnesses, who say there was a quarrel over the settlement of the accounts and that the quarrel still remained open, are much nearer the truth than those witnesses who say that a definite settlement was made at that moment of time.

In that state of the evidence the suit came to a hearing; and the District Judge of Lucknow, Mr. Harington, feels the difficulty arising from the state of the books. He says:—"The Plaintiff's books, kept by one Paras Ram, his brother-in-law, are against him, insomuch as they contain no entry of the sum of Rs. 15,000 said to have been admitted as due on January 31st 1879, until the 26th May last, the very date on which the plaint was drawn up. Such carelessness on the part of so well known a firm may appear unaccountable, and the explanation given by Paras Ram was an unsatisfactory one." He then weighs the evidence, and comes to the conclusion that, having regard to the position and high character of the witnesses of the Plaintiff, he is bound to believe them. Then comes the question what decree he shall give to the Plaintiff. He winds up his judgment thus:—"Plaintiff falls back on the admission as the basis of his claim for the sum admitted to be due, and for interest. Strictly speaking, he is entitled to this; but looking to the very slipshod nature of the contract, and to the room for reasonable doubts as to the details of what took place on the 31st of January 1879, I am of opinion that Plaintiff should in his decree be restricted to the conditions of the agreement then made." The Judge therefore seems to have thought that some reasonable doubts were to be entertained as to what actually did take place, and in effect he gives the Plaintiff a decree

for specific performance of the agreement made; that is to say, the payment of Rs. 15,000 by instalments, the first instalment falling due on the 31st January 1880.

Both parties appealed from that decree to the Judicial Commissioner; and the Judicial Commissioner, after laying down the very sound principle that the Plaintiff was bound to prove his case, enters into a careful examination of the evidence, and comes to the conclusion that the Plaintiff has not proved his case.

Their Lordships agree with the view taken by the Judicial Commissioner. They consider that it is a very dangerous thing to rest a judgment upon verbal admissions of a sum due, without very clear evidence, especially when there are other means of proving the case, if a true one. Now in this case, if it be true that Deendial was indebted to the Plaintiff in the sum alleged, or in any sum, the Plaintiff's proper course was to bring the accounts into Court and to prove that debt. If the Plaintiff shrinks from doing that, and chooses to rely upon verbal admissions made at a meeting at his house, he should give the most clear and cogent proof of such admissions, and he should bring into Court a case that is not open to reasonable doubt. Their Lordships think that the evidence adduced in this case is very far from that clear and cogent proof which the nature of the case requires.

The result is that, in their Lordships' judgment, the Appeal should be dismissed with costs; and they will humbly advise Her Majesty in accordance with that opinion.

