

*Judgment of the Lords of the Judicial Committee on the Appeal of Khushi Ram v. The Deputy Commissioner of Kheri (as Manager of the Mallanpur Estate), and Rao Maneshar Baksh Singh, from the Court of the Judicial Commissioner of Oudh; delivered 21st July 1900.*

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Present at the Hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD LINDLEY.

SIR RICHARD COUCH.

SIR HENRY STRONG.

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[*Delivered by Sir Richard Couch.*]

The suit in this Appeal was brought by the Appellant against the First Respondent as manager under the Court of Wards of the Mullanpur estate of Rae Maneshar Baksh Singh the Second Respondent and against the latter as personally liable to recover Rs. 38,974. 6. 6 for principal and interest due to the Plaintiff from the Second Respondent. Of the six issues which were settled at the hearing the only one which has now to be determined is the last namely "What balance is due to Plaintiff?"

The Plaintiff's case was that there had been money dealings between him and the Raja the Second Defendant for a long time and accounts between them were settled annually that on the 16th October 1883 accounts were settled and Rs. 48,121 were found to be due to the Plaintiff, on the 1st October 1884 accounts were again settled and Rs. 44,108. 5 were found to be due to him and on the 11th March 1885 the account

was made up and Rs. 43,221. 1 were found to be due to him, that on that day the Raja executed a bond in his favour for Rs. 30,000 which included Rs. 12,235 part of the Rs. 43,221. That in April 1885 the Plaintiff was appointed manager of the Raja's estate for 14 years and it was agreed that the money due to him from the Raja should remain as security for the due performance of his duties. On the 1st November 1885 the Raja again made up the accounts and having given credit to the Plaintiff for Rs. 1,425 struck a balance of Rs. 30,909. 12 as due by him, subsequently the Raja placed his estate under the charge of the Court of Wards and it was under its charge from the 5th August 1886. The Court of Wards paid the amount due on the bond. The First Defendant the Deputy Commissioner admitted that there had been money dealings between the Plaintiff and the Raja, that an account was stated on or about the 16th October 1883, that the Raja gave the Plaintiff an "I O U" but unstamped for the amount found to be due, that an account was also stated on the 11th March 1885 when the Raja executed a bond for Rs. 30,000, that the management of the Raja's estate was entrusted to the Plaintiff, that the estate was placed under the management of the Court of Wards with effect from the 5th August 1886 and that he (the First Defendant) subsequently paid the bond for Rs. 30,000.

The accounts which the Plaintiff relied on as evidence that the balance claimed was due to him are Exhibits A 1, A 3, and A 5. A 1 is the account of the 16th October 1883, A 3 of the 1st October 1884, and A 5 contains the accounts of the 11th March 1885, and 1st November, 1885, and all are signed "Sheoraj." The only witness examined for the Plaintiff was the Raja, who said that Sheoraj Mal was wasil-baki-navis (writer of receipts and payments) in his office

for about 20 years. From time to time accounts were made up between the Plaintiff and himself, the Exhibits A 1, A 3, and A 5 were in the handwriting and bore the signature of Sheoraj Mal, he had no authority to sign his (the Raja's) accounts. Their Lordships think that in the judgment of the Appellate Court composed of the Judicial and Assistant Judicial Commissioners it is rightly said that the District Judge who had decided the suit in the Plaintiff's favour appears to be entirely wrong in saying that the Raja admitted the Plaintiff's accounts, he admitted that accounts had been stated, but he did not admit that A 1, A 3, and A 5 were the accounts which had been stated, that his evidence merely proves that A 1, A 3, and A 5, are in the handwriting of and signed by Sheoraj Mal his wasil-baki-nawis. The only other evidence for the Plaintiff is Exhibit A 2. This is a letter from the Raja to the Plaintiff dated 16th October, 1883, in the following terms:—"After tendering  
 "compliments and expressing a desire for the  
 "welfare of both sides, I have to say that after  
 "making up the accounts, Rs. 48,121 have been  
 "found due to you. I shall repay the same with  
 "interest at Rs. 1. 4, and *Sagoon* at Rs. 1. 4  
 "per cent."

This document when produced at the trial bore a one anna adhesive stamp. Colonel Cowie, a witness for the Defendants who was in October 1883 the manager of the estate for the Court of Wards deposed that A 2 was not the document on the basis of which the Plaintiff asked him to pay the money sued for, that he recollected that on the back of the rukka he put down his initials having noted it to be unstamped, he thoroughly recollected that the rukka was unstamped. A 2 is not initialled by Colonel Cowie. The Raja deposed that A 2 bore his usual signature and also bore the

signature of Janki Parshad who was once in his service, that A 2 did not appear to be the rukka which he signed because there was no stamp to it, as far as he remembered he used to sign on the stamp, he did not deny it was his signature, it was his, he must have given the document on plain paper, had there been no stamp on this rukka he should certainly have said it was the rukka he had executed.

Now it appears in the proceedings of the District Judge that the Plaintiff was continually present at the trial and he did not offer to be examined as a witness. On the 8th June 1891 the Defendant's pleader petitioned the Court that as the Plaintiff was present in Court his evidence might be recorded and that he might be immediately served with a summons as a witness. This was refused by the District Judge on the ground that "the law distinctly lays down that a list of all evidence on which parties intend to rely should be given in at the first hearing." No account books of the Plaintiff or the Raja were produced. The conduct of the Plaintiff in thus deliberately abstaining from giving his evidence is a strong reason for thinking that his case as presented would not bear examination and their Lordships agree with the Judicial Commissioners in the opinion that he had failed to prove that the Rs. 30,900.12 were due to him in addition to the money secured by the bond for Rs. 30,000. They will therefore humbly advise Her Majesty to dismiss the Appeal and affirm the decree appealed from. The Appellant will pay the costs.

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