

*Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of Musammatt Rajeswari Kuar v. Rai Bal Krishan (now by Order of Revivor his sons and legal representatives, Rai Ghani Krishan, Batey Krishan, and Krishnjee) from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered July 15th, 1887.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

IN this case the Appellant and Respondent are the representatives of the original parties to the transaction, but no change of interest or any legal question is raised by their succession to their predecessors, and the case is exactly the same as if the present Plaintiff and Defendant were the original parties themselves.

The Plaintiff sued on a bond for a debt of Rs. 20,000, and the nature of that debt is stated on the face of the bond. Rs. 13,000 was an old debt, and Rs. 7,000 was stated to be a new debt contracted at the time of the bond; and the bond stated also what the object of the contract for the new debt was. The Defendant alleges that those recitals are false. In effect he alleges that the bond must be taken as of no value, and that the account between the parties must be taken as between an ordinary debtor and creditor. In the first place it is alleged that the object for which the Rs. 7,000 is said to be borrowed was not the object, and that the money was not applied to that object. Their Lordships think that is a matter of no importance whatever. It may be that the object stated was not the

object. It may be that a week afterwards the recipient of the Rs. 7,000 changed his mind and did not apply the money to that object. It does not signify what the object was. To prove that the Rs. 7,000 was not actually advanced, the Defendant called for the Plaintiff's books of account. Those books of account were produced, and they showed apparently the whole transaction between the parties, and that the impugned recital was substantially correct. About the old debt for Rs. 13,000 there was no question, and the Rs. 7,000, the new advance, was made out in this way: Rs. 1,000 was paid for revenue some two or three days before the date assigned to the bond; a sum of Rs. 800 odd due for interest was allowed on account and taken as capital; and the remainder, Rs. 5,000 odd, was credited to the Defendant in the books of the Plaintiff to be drawn as occasion required. Then the books of the Plaintiff showed that the money was drawn out, and if they are to be taken as evidence in favour of the Plaintiff there is a complete answer to the charge of incorrectness made by the Defendant.

Now what the Subordinate Judge did, was to look whether the items of discharge in the Plaintiff's books were corroborated or not. Where they were corroborated he allowed the discharge, and where they were not corroborated he disallowed them. In doing that their Lordships think that the Subordinate Judge acted on an entirely wrong principle. He acted on a principle which would have been correct if the Plaintiff had relied on his own books as proving his debt; but that was not the case. The Plaintiff relied upon the bond which was executed by his debtor, and unless that bond is displaced there is no answer to the action. It is the Defendant who seeks her defence in the books of the Plaintiff. She calls for the books

and extracts her defence out of them, and it would be a monstrous thing if the party sued were allowed to call for the accounts of the Plaintiff, and extract from them just such items as proved matters of defence on her part, and were not to allow those items which make in favour of the Plaintiff. The High Court held that the books must be admitted in toto. Their Lordships think the High Court were entirely right, and that the decree cannot be complained of on that ground.

Then a much smaller matter was put forward, just at the end of Mr. Raikes' argument on behalf of the Appellant. It appears from the Plaintiff's books that a number of sums were received from time to time by him on behalf of the Defendant. The dates of those receipts are given, and it is alleged that they were not carried into account on those dates as against the principal or the current interest, as it may be, of the bond, so as to discharge the Defendant from interest *pro tanto* from those dates. The principle that they should be so carried into account is a sound one, but their Lordships are exceedingly doubtful whether that principle has been violated, and it certainly is the duty of the Appellant who asks them to modify a decree of the High Court on this point to show them clearly that it has been violated. Their Lordships find that the Plaintiff's Gumashta, who is the battle horse of the Defendant on this matter, was not asked a question on the subject, and it may have been that if he had been asked questions he might have shown that in taking the interest account the receipts were credited on the right dates; or he may have given some other explanation of the mode in which the account was made out. That the parties were in habits of very great intimacy is shown by the Gumashta, and it is also shown that the Defendant's pre-

decessor was a shrewd careful man of business, and it is unlikely that he should not have known how his own account was standing with the Plaintiff. His own books are not produced, so that their Lordships do not know whether he himself would have given any different account of the transactions. Moreover, it does not appear that this point was raised before the High Court, and even if it were raised as late as the appeal to Her Majesty, it is raised in so obscure a way that it requires Mr. Raikes' explanation to understand how it was raised at all.

Under these circumstances their Lordships must say that, although the principle contended for by Mr. Raikes is a sound one, they have no evidence before them that the decree contains any violation of it. They therefore think that the decree appealed from should be affirmed, and the appeal dismissed with costs, and they will humbly advise Her Majesty to that effect.