

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Murli Dhar v. Raghuraj Singh, from the Court of the Judicial Commissioner, Oudh; delivered 19th July 1901.

Present at the Hearing :

LORD HOBHOUSE.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Plaintiff in this suit, now Appellant, is a pleader in the Court at Lucknow, and he is the son of a Judge of the Small Cause Court, now retired, named Rai Narain Das. The plaint was filed on the 23rd June 1892. The Defendant, now Respondent, is the Talukdar or titular Raja of Harha.

The plaint states that the Defendant had executed hundis in the Plaintiff's favour for a former debt, which on the 25th March 1889 amounted to Rs. 8444, and that on that day the Defendant gave nine new hundis for that amount and according to the former practice promised to pay interest at 18 per cent. On the 2nd September 1891 the Defendant rendered a signed account, showing the sum due from him, which he promised to pay. No payment having been made, the Plaintiff sued for the sum of Rs. 13,626. The Defendant denied all the material allegations.

In support of his statement the Plaintiff filed with the plaint the nine hundis all in the form following:—

“GLORY TO LORD GANESH.

“Letter written, from the auspicious place Harha, by Raja Narendra Bahadur Singh, with his greetings, to the address of Raja Narendro Bahadur Singh of Harha.

“I do draw a hundi upon myself, for Rs. 1,000, half of which is Rs. 500, and double of which is to be paid.

“The amount has been paid here by Lala Murli Dhar, payable 91 days after 9th Chait, dark side.

“Amount to be paid in Queen's coin, with due care in accordance with the hundi usage, to a trustworthy person, on ascertaining his whereabouts.

“Signature of NARENDRA BAHADUR SINGH,

“by the pen of Rani Saheb.

“Dated 9th Chait, dark side, 1946 Sambat.

“ (Rs. 1,000.)

“(74½.) Letter written by Raja Narendra Bahadur Singh of Harha, with his greetings, to the address of Raja Narendra Bahadur Singh.

“Amount received; hundi accepted.

“Signature of RAJA NARENDRA BAHADUR SINGH,

“by the pen of Rani Saheb.”

He also filed the account of the 2nd September 1891 marked as Exhibit A 3 which shows Rs. 11,879 to be due. He added a number of letters [purporting to be written to him by the Defendant. They are not referred to in the plaint. They contain explicit acknowledgments of the debt and promises to pay it. They were relied on by the First Court, but there is no proof that they were written by the Raja or on his behalf, and in the Court of Appeal the Plaintiff abandoned them.

The bare statements of the plaint, which do not explain the signatures to the hundis sued on, nor the nature of the original hundis, nor the origin of the “former debt,” were supplemented at the hearing by the Plaintiff and his father. The Plaintiff knows very little of the matter. He says that when he was a minor his father gave him Rs. 30,000 or 40,000.

“The loan in suit given in 1888. Rs. 7,000 lent. Then I was of age. Till then I did not

“ know Defendant or his mother or their any
 “ Karinda or servant. The loan transaction
 “ negotiated with my father. I have no know-
 “ ledge thereof. I came to know when the
 “ money was lent.”

Still he gives his version of the transaction. He was aged 21 when it took place, having attained majority when 18. The money was taken to the Raja's palace at Harha by Gauri Shanker who was a peon in the Small Cause Court and Bhawani Din. “ Gauri Shanker on his return
 “ informed that the money was paid to De-
 “ fendant in presence of his mother and brought
 “ eight hundis executed by Defendant's mother
 “ on behalf of Defendant. . . . My father
 “ had asked Bhawani Din Shukul to take a regis-
 “ tered deed for the money from Defendant.

“ Defendant was mentioned as Raja, his name
 “ not mentioned before me. Bhawani Din and
 “ Gauri Shanker said that Defendant's mother
 “ managed the estate and her signature was of
 “ most importance, so they took her signature.
 “ They told that all the debts she borrowed were
 “ considered valid. I did not inquire anything.
 “ In 1893, when Defendant denied his mother's
 “ power to execute the hundis, then it struck
 “ me to make enquiry about her powers.”

When asked how he could feel satisfied with the story he simply answered “ I believed Bhawani Din.” And afterwards he said “ I did
 “ not consider it my duty to enquire with whom
 “ my father was dealing on my behalf; rather I
 “ considered it morally wrong to interfere. My
 “ father dealt with Defendant as my guardian,
 “ and agency is implied in guardianship.”

It is clear that the Plaintiff was completely supine, leaving his father to act as owner of the money; and such was probably the fact, as the Judicial Commissioners have held. But he adds to the case made by the plaintiff and the filed

documents, by stating that the Defendant called on him twice and his son called once, and that both promised to pay. Except for this addition the whole burden of the case is thrown on the father.

Narain Das asserts that the Rs. 7,000 was his son's money, but that he himself dealt with the Defendant because his son was a minor. He had no acquaintance with the Defendant or his mother until this dealing. It was Bhawani who asked him to lend a much larger sum, Rs. 40,000 or 50,000, to Defendant, and he did lend Rs. 7,000. He had known Bhawani since 1864 or 1865; had never lent money through him; did not know whether Bhawani had any concern with the Defendant. He sent the money through Bhawani and Gauri Shanker. He does not say what security he required. Asked whether he enquired as to the Rani's authority to sign for the Raja, he makes this answer:—

“ I had heard the Rani was Karkun, and
 “ some paper was filed with the Collector,
 “ declaring that the debts taken by the Rani
 “ could be debts of the estate. I made no
 “ enquiry about it. Pandit Prem Nath, Tah-
 “ sildar, and others declared to me of it. The
 “ paper was filed seven or eight years ago, so I
 “ heard. Bhawani Din declared that without
 “ the authority or signature of the Rani no loan
 “ was considered valid. I made no other enquiry
 “ about it. I saw no authority.”

The original hundis are not forthcoming but it appears (see Rec. p. 35) that they were in the same form as the renewed ones: signed on behalf of the Raja by an unnamed Rani.

The story so told is a very marvellous one. An experienced lawyer is asked by an acquaintance with whom he had not previously

had any loan transactions to lend money to a Raja of whom, and of whose household, and of whose relations with the man who assumed to act as go-between, he knew nothing whatever. He acquiesces and sends off Rs. 7,000 by the hands of his acquaintance and one of the peons of his Court. What security they were to take he does not say, but from his son and from another witness we learn that it was to be a registered bond for which a stamp for Rs. 40 was procured by Bhawani. What he gets is some hundis, signed not by the Raja nor by anybody named but by a "Rani Saheb." No stipulation is made for interest. And yet, he makes no enquiry concerning this extraordinary difference between the transaction which he authorised and that which was effected. Any-one, to say nothing of a Judge, would know that a Raja's palace might contain more than one lady called Rani; Saheb being merely a respectful mode of address common to all persons of rank male or female. In point of fact it appears that there were four in this palace. Narain Das knows nothing about it and yet he makes no enquiry. He had heard it said that "the Rani" was Karkun, and that was enough for him. Nay a year later, when neither principal nor interest had been paid, he sent the same agents to demand payment, and is satisfied to receive fresh hundis in the same form. Such a story can only be received on strong and clear testimony.

By himself Narain Das proves nothing to show the original loan except that he committed Rs. 7,000 to Bhawani and Gauri Shanker. The evidence of the Raja is worth very little, he being a man of weak understanding, but so far as it goes he denies receipt of the money or that the hundis were ever signed on his behalf; and he says nothing to support the Plaintiff's case. If then the original loan is to be proved, it must

be by the evidence of Narain Das's emissaries, or of the Raja's amla.

Bhawani died either before suit or before evidence was taken. Gauri Shanker was examined at length. His story is that he and Bhawani took the Rs. 7,000 by railway to Safdarganj and thence to Harha by two elephants sent by the Raja. They were late and there was no time to execute a document. So they returned with the money to a neighbouring house belonging to one Mahabir who was a relative of Bhawani. Next day the Raja sent an elephant and thereon Bhawani Mahabir and Gauri Shanker took the money to Harha and gave it to the Raja and Rani, when they executed hundis. "The Raja and Rani appeared before us and three men weighed the money. All the servants called her Rani, so I took her for Rani. The Raja asked her to sign." When asked why, he said "The Rani only had authority in those days." Then follows the question—

"Did Rai Saheb tell you to get a deed signed by the Raja in the name of the Plaintiff?"

A. "By the Raja or the Rani in Plaintiff's name."

"Which Rani not mentioned. Her name not mentioned. Harha's Rani only mentioned."

Pausing there for a moment, we may ask how it is possible that Narain Das, who knew nothing of the state of the Raja's household except from the merest gossip, could have given such an instruction. He himself tells us nothing about it.

The witness goes on to say—

"It was about 9 in the morning. I cannot name any servant of the Raja, except Diwan Anant Ram. The Rani lived inside the house and was not present in the office. The Raja was also not present in the office where the hundis were written. The Rani is parda nashin. The Diwan took Bhawani Din, Mahabir and myself

“ inside the female-house and took the hundis too.
 “ There an old man was called in, who weighed
 “ the money, in presence of the Rani and the
 “ Raja. The Rani and the Raja sat in the open
 “ court-yard of the female-house and there we sat
 “ too on a dari. The Raja and Rani sat on the
 “ same dari at a short distance. The Rani’s face
 “ was open. I saw it. I saw her for the first
 “ time. Again I saw her when the hundis were
 “ renewed in the same female-house. Then too
 “ she appeared before me, but I could not see her
 “ face, it being concealed. I had no power to ask
 “ the Raja to sign. All the men called her Rani
 “ so I knew her to be the Rani. I am not sure
 “ whether she was the Rani. I cannot say
 “ whether she who renewed the hundis was the
 “ same Rani who had signed the hundis before,
 “ because her face was concealed.”

All this circumstantial account of the crucial part of the transaction was rejected by the Subordinate Judge (himself apparently a Hindoo) with whom the Judicial Commissioner agreed on this point, as being too improbable in itself, and as being contradicted by Anant Ram the dewan to whom the witness refers, and by his companion Mahabir. But the scene described is one which a man could not mistake or forget; and if the Rani did not appear before him he must have spoken wilful falsehood.

Gauri Shanker’s host Mahabir says that he was present on the same occasion, having gone on his own account to lend the Raja a sum of Rs. 2,200, about which litigation was pending when he gave evidence. He professes to have had interviews about other small advances of money with that Rani who was the Raja’s stepmother and who acted for him; but he cannot remember any particulars. He used to talk with her through a chik or reed screen. On the critical occasion the Raja asked the Rani to sign the hundis and she did so. He saw that through the chik.

He says the chik was constructed so that persons on each side might see each other. But he cannot explain what is the value of a chik of that sort; and he says of the other Ranis that he had not seen them; "they remained behind the chik."

Then being carried more into detail he gives different accounts of the affair. He says the money was delivered to the Raja by Bhawani two days before the hundis were executed, and he was present. Anant Ram also was present and Gauri Shanker. All this was in the sahan or courtyard of the house where the Rani and Raja were. Then he goes on to say--

"Bhawani Din, Gauri Shanker, &c., who were present when Plaintiff's money counted, were also present when my money counted one ghari after. At first, on the next day of the delivery of the money, the Raja gave me a rukka, which was renewed by a hundi a fortnight or one month after. The rukka was not on a hundi paper, but was stamped. Plaintiff's hundis executed when my rukka executed. My rukka written in the katcheri and signed by the Raja in the katcheri. Plaintiff's hundis executed in the katcheri and signed by the Raja there. The hundis given to Gauri Shanker by the Raja."

In re-examination he was asked to explain these contradictions.

"You stated first that the Rani signed the hundis, and again in cross-examination that the Raja signed them in the katcheri, what do you mean?"

"Plaintiff's hundis and my rukkas written in the katcheri, both sent to the Rani, who was in a separate house, through a sepahi; she signed them and returned to the Raja, who delivered them to Gauri Shanker and me, respectively. No one else went with that sepahi. Neither I nor Gauri Shanker went."

"You said you saw the Rani sign behind the chik, now you say you did not go there, why this difference?"

"I saw the Rani sign the hundis on the day when the money was delivered. The Rani kept the hundis with her for two days. I do not know why. After two days the

“ Rani of her own accord sent the hundis to the Raja in the katcheri ; the Raja again sent them back to the Rani for verification (tasdiq), the Rani returned them with a request to deliver them. The Raja then delivered them.

“ Did you see the Raja sign the hundis or the Rani ?

“ I did not see the Raja sign. I saw the Rani sign. The hundis written in the katcheri on the day when the money was delivered.”

The result is, that one of the two witnesses to the original loan says that the money was delivered by him, and the hundis were signed by the Rani sitting openly face to face with him, and were handed over to him at once. The other says : first, the Rani did sign at the time the money was delivered, being behind a chik, but one so transparent that the witness could see her ; secondly, the hundis were signed by the Raja in the katcheri two days after the delivery of the money to him by Bhawani ; thirdly, they were executed by the Raja in the katcheri one day after the delivery of the money ; fourthly, they were written in the katcheri and sent to the Rani inside a house through a sepahi who brought them back signed ; fifthly, the Rani did indeed sign when the money was delivered, but for some unknown reason kept them for two days, and then of her own accord sent them to the Raja with a request to deliver them. All these stories are told by a man to whom the signing and delivering of the hundis was of the utmost importance, seeing that without them he would be leaving his money behind him with no security and no voucher ; and are told of another man in the same predicament. And that is all the evidence to be got from the Plaintiff's agents and their coadjutor to prove the loan to the Raja.

Anant Ram does not support any of these accounts. After stating in general terms that the Defendant borrowed some money received from Bhawani under hundis executed in the Plaintiff's name, and that he was present at the execution, he goes on to say that he does not remember who wrote them, nor to whom they

were delivered, and cannot tell who signed them; and in cross-examination he adds that the Plaintiff's money did not come in his presence. Beyond stating that the Raja's mother or step-mother, named Huns Kumwar, was considered malik and was called by the servants Rani Saheb or Sarkar, he does nothing to prove the original loan.

If there were good proof of the renewed hundis, those now sued on, it would not be necessary to examine with such care whether the original loan is proved. But on this point the evidence is quite unsatisfactory. Everything is left to Gauri Shanker. Narain Das says that he sent Gauri Shanker to demand payment; that the Raja gave new hundis and took back the original ones. Gauri Shanker says that he was so sent; that Bhawani accompanied him; that the Raja was present, and at his request the Rani signed. An extract from his evidence has been quoted above, showing that he tells the same story of the Rani being in the courtyard; only this time her face was concealed so that he could not identify her. Anant Ram says that the original hundis were returned by Bhawani, and that a Court peon was with him; it was when an account was made. He says that the hundis were renewed, but he cannot tell when; it was not done in his presence; the signatures look like the Rani's. There is no trace of any account of this date. That is the whole evidence; and considering what sort of a witness Gauri Shanker is, it is hardly worth commenting on.

Then reliance is placed on the Raja's admissions, the most important of which, as the letters are now out of the question, is the account A 3. That is the only document purporting to be signed by the Raja himself. It is a simple account of principal and interest at 18 per cent. on hundis dated 25th March 1889. It bears no date of time or place, but interest, for which the

hundis do not provide, is calculated up to 2nd September 1891. It is alleged in the plaint that on the renewal in 1889 the Defendant agreed to pay interest "according to the former practice"; but as the loan of 1888 was the first dealing between the parties there was no such practice. How then is this document proved ?

The Plaintiff and his father can tell nothing about it. They say that Gauri Shanker was sent to demand payment, and only brought back the account A 3. Narain Das was asked how he could be satisfied with the Raja's signature when he believed that no one but the Rani had authority. He answered that Defendant and his mother might be on bad terms at the time. The Plaintiff, speaking to the same point, said that Bhawani and Gauri told him that the Raja signed because the Rani was dead.

Gauri Shanker says that he went to Harha some eight or nine times to make demands. "Last time I went and took a letter, as I did every time. Defendant sent account signed by himself. The letter must have contained a demand [Sees A 3]. It is that account. I recognise it. I made demands from any Karinda I met. I gave letters to the Raja and he ordered it to be given to the Dewan. I gave it to the Dewan. He consulted the Raja and replied to the letters." He has apparently passed from A 3 to the letters filed with the plaint and ascribed to the Raja. These he says he cannot recognise. Neither, it seems, can anybody else. In cross-examination, after stating that Narain Das sent him to get payment, and not a signed account, he says, "Defendant signed the account in my presence in an outer house. I was at a short distance, some 20 steps off. . . . Mahabir, Bhawani Din and I were present as well as Dewan Anant Ram when the account signed. I saw Defendant

“ sign from a distance. I never saw Defendant “ sign any time else.” A little later he adds, “ When the account signed by Defendant the “ Rani was dead and I informed Rai Saheb “ of it.” But then Rai Saheb otherwise Narain Das, when asked, knew nothing of this reason for the Raja signing, and gave a different, though a conjectural reason.

The testimony of a witness who has told so many contradictory stories as Mahabir is not of much value. But he does profess to have been present (he does not say why, and Gauri Shanker cannot say why) two years after the renewal of the hundis, when Bhawani, Gauri Shanker, and the Raja made account and the Raja acknowledged some amount found due in writing. This he identifies as A 3. The Raja signed it before him. The Rani was not there. She might be inside. Afterwards he says that he cannot say who was present. Defendant ordered his Dewan to make it.

Anant Ram says that he did not see A 3 signed. The signature resembles the Raja's, but witness cannot say that it is so. His immediate superior in the household was Suraj Bali whom he describes as a dishonest servant, one who robbed the Raja, and was dismissed on detection. His writing resembled the Raja's. Witness cannot tell whether the signature to A 3 is that of the Raja or Suraj Bali. The writing of the account looks that of Nand Kishore, another of the Raja's numerous amla. Then he says “ Nand “ Kishore has written A 3 in my presence, but it “ it is not signed before me.” As to the making of the account he says that when he was Dewan Bhawani and a Court peon came to demand money once or twice.

“ Once payment was promised, the Rani having sent verbal “ orders to the effect to Karindas; the other time some account “ made.

Q. “ With whom ?

A. " Bhawani Din Shukul and Nand Kishore, a clerk of the Raja (Defendant). The Rani was inside.

Q. " Was she alive ?

A. " I cannot tell. If alive, she remained inside. The account made 6 or 7 years ago.

Q. " Under whose orders, and whose nigrani, *i.e.*, superintendence, was the account made ?

A. " Under the orders of the Raja or the Rani and under Rani's superintendence. The account checked in the inner apartments. I cannot tell by whom. I never went inside. The Rani did not appear before me. Occasionally, when sent for, I went up to the purlah. The accounts and estate papers used to be sent inside to the Raja, but the Rani used to check them. The Raja never sat in the katcheri, hence papers were sent inside. The Raja or Rani gave orders to any Karinda directly and sometimes through the Diwan or Naib. The Naib and Diwan were separate officers."

From these confused statements it can only be inferred that the witness did not know or did not choose to say anything about the authorship of the account. He contradicts Gauri Shanker's version of the affair plainly enough. His evidence does support the theory that demands were made by the Plaintiff's agents and that an account was put into writing by some of the Raja's amla. But he does not prove more than that a message went from the katcheri into the "inside," from which an answer came back. Whose answer it was is left in darkness. Nothing is traced to the Raja or the Rani.

It should be observed of this witness that when examined he had been discharged from the Raja's service, and was called by the Plaintiff. The learned Judicial Commissioners think that he is not to be believed. Their Lordships can only say that on the face of his recorded evidence, though it is in some respects so confused as to make it difficult to ground any clear conclusion on it, they do not observe any marks of bad faith. It is chiefly valuable as additional proof of the bad faith of Gauri Shanker and Mahabir. As to those witnesses it would be impossible to attach substantial value to their

proof of the accounting, even if it stood uncontradicted, which is not the case.

Then there are the admissions which are ascribed to the Raja when visiting Lucknow. All are assigned to a date previous to that of A 3. Narain Das says that the Raja visited him and promised to pay off. He came twice and his son once. The Plaintiff also speaks of two visits. No further particulars of these promises to pay off are given. We are not told why the Raja came or what he said. He was called as a witness by the Plaintiff, but no question was put to him on this subject. It is not hinted at in the plaint. It is indeed hard to suppose that two lawyers, such as the Plaintiff and his father could seriously intend to rely on what was said in their houses or chambers by a country gentleman of feeble understanding, with no other person present, no record of the words uttered by him, and no overt act resulting on either side. It is an afterthought and a mere make-weight in a weak case. Their Lordships would not have thought the matter worth mentioning if the Subordinate Judge had not treated it as one of the foundations of his judgment.

They now turn to that judgment. The Subordinate Judge's examination of the evidence is very slight. He decides for the Plaintiff on two grounds; first, the improbability that the Plaintiff and his father should set up a false case; and secondly, the Raja's admissions. Dealing with the suggestion that Narain Das may have been tricked by his agents, the learned Judge asks whether, even if he were so simple a dupe, he would commit forgery of the letters ascribed to the Raja and perjury as to his visits and admissions? That is the whole judgment.

No doubt it is very improbable, almost incredible, that a gentleman filling the position of Narain Das should set up a false case. But

the case he does set up is, as before pointed out, one of high improbability; not indeed involving immorality as a false case would, but showing a degree of imprudence and looseness in money matters and of careless reliance on inferior agents, such as are, to say the least, extremely rare among men of business. As for the Defendant's oral admissions, enough has just been said about them; and the letters on which so much stress is laid have been abandoned.

The Defendant appealed to the Court of the Judicial Commissioner, and the case was heard before him and the Assistant Judicial Commissioner. The only new evidence was Narain Das's bank account, from which the Court inferred that the Rs. 7,000 in question was the money of Narain Das himself. As regards the right to recover it, it cannot signify whether the money belonged to the father or to the son. But the Court thought that Narain Das had practised concealment, because being a public servant he did not wish to appear as a moneylender, and that he had quibbled about it in his evidence; so that he did not appear in such an ingenuous character as would justify the Court in founding a decree on his evidence alone.

The Court then addressed itself to the other evidence and pointed out a number of small matters tending to weaken the Plaintiff's case. The conclusion they come to is that the story of the Plaintiff is a fabrication. Probably some money was lent to Suraj Bali, perhaps to the Rani by Narain Das, either in his own or the Plaintiff's name, and as they discovered they could not recover it owing to their inability to prove that the Raja asked for or obtained it, they considered it fair that he should nevertheless be compelled to pay, as it was obtained by the representations of his servants, so that they

concocted the present story and support it unblushingly by false evidence.

Their Lordships do not feel compelled to say that. It is sufficient to say that the Plaintiff and his father have offered evidence, some of which is false and the rest is too weak to maintain their very improbable story. Their views on the main points have been expressed in the above comments on the evidence. As regards the foundation of the case, the original payment to the Raja, the principal witnesses must be disbelieved. For the granting of the hundis now sued on, there is no evidence at all except the bald statements of these two tainted witnesses. As to the important exhibit A 3, excluding the same two witnesses, the only evidence to support it is not only very confused, but on any construction it falls short of proof against the Raja. It may well be that Narain Das handed his Rs. 7,000 to Bhawani or Gauri Shanker, and that he has never seen that money again. Whether it remained in the hands of his agents or of the Raja's or both, or whatever became of it, their Lordships are clear that no judicial ground exists for saying that it is traced to the hands of the Raja or of the Rani, or for saying that any document has been signed by which the Raja bound himself to pay anything to the Plaintiff.

The Judicial Commissioner dismissed the Plaintiff's suit with costs. Their Lordships will humbly advise His Majesty to dismiss this Appeal, and the Appellant must pay the costs.
