

Privy Council Appeal No. 49 of 1936.

Oudh Appeal No. 24 of 1934.

Thakurain Gajraj Kuar - - - - - *Appellant*

v.

Thakur Rudra Partab Narain Singh - - - - - *Respondent*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1937.

Present at the Hearing :

LORD MACMILLAN.

SIR GEORGE LOWNDES.

SIR SHADI LAL.

[*Delivered by* LORD MACMILLAN.]

Their Lordships do not find it necessary to call upon the respondent in this appeal.

Counsel for the appellant has urged before their Lordships every possible consideration open to him upon the pleadings and the evidence, but has failed entirely, in their Lordships' opinion, to show any flaw in the very careful judgment passed by the Chief Court of Oudh on 1st October, 1934. No useful purpose would be served in traversing once again the ground which has been so adequately surveyed in the Court below. It will be sufficient to say that this is a simple action on a promissory note, and that certain defences were stated and in particular the defence that the note had never been executed by the defendant and that no consideration had been received such as was alleged. No attempt whatever was made in the evidence to substantiate that defence; on the other hand, an entirely new and elaborate explanation of the transaction was set up for the first time by the defendant herself in the witness box of which no indication had been given in the pleadings and, what was even more serious, of which no warning had been given by way of cross-examination of the plaintiff's witnesses. Consequently, the plaintiff had no opportunity whatever of meeting these allegations then made for the first time by the defendant. There could be no better illustration of the importance of keeping parties to their pleadings than this case, for here part of the story told by the defendant involved a very grave accusation against the plaintiff's father of having made fictitious entries in the account books of the defendant's estate, of which he was the manager, for the purpose of concealing what, if it was

proved, was a very serious fraud perpetrated by him. Not a hint of this was put to him in cross-examination and he was permitted to leave the witness box without any suggestion that such an attack was to be made upon the performance of his duty as manager of the estate and keeper of these accounts.

In the opinion of their Lordships, the criticism of the defendant's pleadings and evidence contained in the judgment of the Chief Court is well founded and entirely justified. Their Lordships have not overlooked the fact that the defendant is a purdanashin lady, but this circumstance ceased to be of importance once it was established that the granting of the promissory note was the free and intelligent act of the defendant "who knew what she was doing and did what she wanted to." In the opinion of their Lordships this is a hopeless appeal and they will humbly advise His Majesty that the decree appealed from be affirmed with costs.

In the Privy Council

THAKURAIN GAJRAJ KUAR

v.

THAKUR RUDRA PARTAB
NARAIN SINGH

DELIVERED BY LORD MACMILLAN

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