Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ganesh Sing v. Ram Rajah, and others, from the late Sudder Dewanny Adawlut for the North Western Provinces at Agra, delivered 13th July, 1869.

Present:

Sir James W. Colvile.
Sir Joseph Napier.
Lord Justice Giffard.

Sir Lawrence Peel.

IN this case their Lordships are of opinion that the Judgment appealed against cannot be supported.

In their judgment the Judges of the Court of the Adawlut express their opinion that the whole foundation of the claim of the Complainant fails. The parties that they had before them were only a portion of the Defendants against whom the Decree of the Principal Sudder Ameen had been made. They say in their Judgment:—"We are of opinion "that the Plaintiff Respondent, so far from esta- "blishing his claim against the Defendants Ap- "pellants, has not even proved that the acts of "plunder complained of ever occurred. We are, "therefore, compelled to differ from the Principal "Sudder Ameen, and, reversing his decision, to "dismiss the Respondent's claim, not only against "these Defendants who have appealed, but all those "Defendants who have been included in the Decree "of the Lower Court, as it would not, in our "opinion, be consistent to allow this Decree to "stand against these latter parties, while the entire "claim preferred by the Plaintiff Respondent has "been declared by us unfounded and unestablished."

Now that decision seems rather an indiscriminating decision, for thirteen of the Defendants had confessed to their having been present at the

plundering, and some of them had partaken of the booty; twenty-seven did not appeal.

Their Lordships cannot entertain a reasonable doubt on the whole of the evidence that there had been a plunder of the Plaintiff's property to some extent, and that it was a joint transaction. During the time of the mutiny the chiefs of some villages collected people together with a preconcerted purpose of plundering the Plaintiff's property, and it is quite plain upon the evidence that all were acting with a common purpose of plunder, that they went to the Plaintiff's house for the purpose of plundering, and each co-operated more or less; and where parties go with a common purpose to execute a common object, each and every one becomes responsible for the acts of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility.

Well, then, taking it as plainly established upon the evidence that there was a plunder of the property; that it took place in pursuance of a common design of all these parties who co-operated in carrying it out; the only question was, to identify any of the persons who were present co-operating in that common design. In a criminal matter punishment may be apportioned, but in a matter of this description, where the Plaintiff is to be compensated for the loss he has sustained, the law does not allow men to apportion their own wrong, and does not apportion it for them. Each and every person co-operating to any extent in a plunder of this description is responsible to recoup the party plundered for the loss he has sustained.

That being the case, there was no question in reality that involved difficulty in decision, but to identify the persons who were present, and formed part of that plunder party. No doubt, in the circumstances of the country at the time, there was a great temptation to accuse, and, perhaps, considerable facility in charging particular persons suspected, or upon whom it might be desired, from any motive, to impose responsibility. But there is this fact, as was very properly observed by Mr. Wood, that none of these parties who now belong to the group of Respondents, tendered his own evidence to contradict the evidence of the two wit-

nesses required by the Principal Sudder Ameen. His principle seems to have been, that he would not attach responsibility on any individual who had not been shown, by two witnesses at least, to have been present on the occasion. Then, when persons so accused do not think fit to avail themselves of the opportunity they have had of exculpating themselves, by their own evidence, from the charge made against them, surely that general reluctance to meet by their own evidence the evidence brought forward against them justifies the Court in relying on such unopposed testimony. Some of them in the defences which have been made seem to have imagined, that because they had not got a large share of the plunder, or because, as they allege, they were coerced to join in the transaction, that excuses them from responsibility. If the matter were to be disposed of in a criminal proceeding, where the judge had to inflict a punishment or a fine, all that might be taken into account; but here, in a civil proceeding to obtain compensation for the loss the Plaintiff sustained, by a transaction for which all who joined in it are responsible, in the eye of the law,—you have nothing to do but simply to see that, in point of fact, the parties accused were part of that common assembly which had, and executed, a common purpose of plundering this man's house, and are bound, each and all, to make him compensation for the loss that he has sustained by the demolition and abstraction of his property. It is very likely that at first, in the confusion of the whole thing, and the difficulty of proof, there was exaggeration in the claim which was made, but the claim in respect to the jewels and other things has been reduced, and the Plaintiff has certainly confined it within reasonable bounds. It certainly does appear on the evidence that he was plundered at least to the extent at which he now lays his claim, and perhaps considerably more. The judgment appealed against states that the entire claim was unfounded and unestablished, and that the decree was wrong against *all* the parties. But, confining it to the case of parties who had appealed, they were parties who, instead of giving their own evidence before the Principal Sudder Ameen to exculpate themselves, and show that they did not form a part of that plundering party,—instead of simply doing

this and putting their own evidence against that of the two witnesses who were brought forward against them, they appeal to the superior Court, and argue upon the whole transaction, and get the Court of the Adawlut not to institute a discriminating inquiry into the credit of the witnesses, in each case, but to come to the conclusion that there was no foundation for the claim at all. There could not have been any adequate sifting of the evidence, and it does seem to be an unreasonable conclusion, on the whole of the evidence, to say or suggest that the Plaintiff had not been plundered at all.

Under these circumstances, their Lordships feel no difficulty in saying that, in their opinion, the Judgment of the Adawlut ought to be reversed. The Principal Sudder Ameen had the advantage of having had the witnesses examined before him, and their evidence not having been contradicted by any of the parties themselves, his Judgment may be safely adopted.

Their Lordships, therefore, will humbly recommend her Majesty that the Judgment of the Court of Sudder Dewanny Adawlut be reversed, and that the Judgment of the Principal Sudder Ameen should be affirmed with costs. The Appellant is to have the costs of the Appeal.