Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lalla Bunseedhur v. the Government of Bengal, from the late Sudder Dewanny Adawlut at Agra, North-West Provinces of Bengal; delivered 27th June, 1871.

Present:—

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
LORD JUSTICE MELLISH.

SIR LAWRENCE PEEL.

THIS was an action brought on the part of the Government of Bengal against Lalla Bunseedhur, who was a surety for the Treasurer of the Mirzapore Collectorate; and it was brought to recover a sum with interest of upwards of 60,000 rupees. The case on the part of the Government was, that between 1843 and 1848 the Treasurer had been a party to the embezzlement of the sums of money in question. Now, the first defence that was relied upon was a defence in point of law. It appears that the surety bonds were three times renewed. The Treasurer occupied that position for a period of eight years. The bonds were not renewed every year,—they were three times renewed, and in the other years the Government did not renew the bonds, but they made an inquiry into the sufficiency of the security. The first point that was argued on the part of the Appellant was, that by the renewal of the bonds each bond, as it was renewed, was in fact a novation, so that no action could any longer be maintained upon the old bond, but it must be taken that by an examination of the accounts,

the Government had satisfied themselves that no fraud or embezzlement had been committed up to that time; and that though they did not give up the old bond, yet, practically, the new bond was to be taken in lieu and satisfaction of the old bond; so that the surety only became responsible for the deficiencies which might take place subsequently to the giving of the new bond. If that defence was correct, the consequence would be that there would be a defence to all except any deficiencies which might be proved subsequently to the giving of the last bond. Their Lordships are of opinion that that defence cannot be maintained. It rests entirely upon this, that we are to infer that each new bond was given in substitution for the old one. The Sudder Court says that in their judgment the new bond was given probably under a misapprehension of what was the proper construction of the orders of Government, which require that from time to time—in fact, annually—there should be an examination into the sufficiency of the securities. They seem to have thought that made it necessary, or, at any rate, desirable, that new bonds should be given; but, however that may be, the question simply is—are we to infer that it was intended to discharge the old bond, if, after the giving of the new bond, a discovery was made, though unknown at the time, that frauds had been committed during the time that the old bond was in existence? If, indeed, the Government had known of the frauds, that would raise a totally different question, for then, of course, they ought to have warned the surety, and not allowed him to go on by giving a new bond. But that is not contended. It is not suggested that until the year 1848, when the discovery was made by one of the parties in the office making a statement to the Government, the Government had any suspicion whatever that any frauds were going on. The old bonds were never given up. The surety did not ask for the old bonds. There is nothing to show that he had any idea that he was discharged, or that he had a right to the old bonds, and their Lordships think that the explanation given by the High Court is the correct one; but whether it is correct or not, there is nothing to show that the Government intended to give up or abandon any claim that

they had upon any of the bonds. Then it was argued that at any rate the Government having satisfied themselves, by their Collector, and by the examination which they made of the accounts, that no fraud had been committed, and that the accounts were correct, the new bonds were given upon the faith of the accounts being correct, and that they are to be estopped from saying that the accounts were incorrect. There does not appear to their Lordships to be any ground for that argument. There must be such gross negligence as almost to amount to a participation in the fraud, before the fact of the Government examining into the accounts and not discovering the frauds sooner could operate as a discharge. The object of having securities is that if secret embezzlements take place, the Government may have a security upon which they can rely.

Then with respect to the case itself. The mode in which the alleged frauds were committed is stated very clearly in the judgment of the Zillah Judge. He puts it in this way:—"The Govern-"ment asserts that the embezzlement occurred "in this way, viz.,—the treasurer received sums of "money on account, revenue of villages, etc., "which he did not pay into the Government Trea-"sury, or enter in his Hindee Siaha; but, in con-"nivance with the Siaha Navees and others, en-"tered in the Persian Siaha as received by trans-"fer, although there were no deposits on account of "the said villages, etc., from which payments by "transfer could be made, at the same time refer-"ring in the said Siaha, and also in the receipts he "gave for the said sums to orders issued for pay-"ment by transfer from *bonâ fide* deposits relating "to other villages, etc., which payments again "were made up from moneys paid into the Govern-"ment Treasury in advance on account of other "villages, etc., which will be adverted to below. "Bunsidhur, in his answer, does not positively "deny that the sum sued for has not been em-"bezzled, but he insists that Sreekishen never re-"ceived the items forming that sum, or they would "be in his Hindee Siaha; and, moreover, Irasals "have not been adduced to show that the sums "were sent to him to take charge of; and that, in "short, the Persian Umlah and Tehseeldars are the "embezzlers, and not Sreekishen. I consider that

"the statement of the Government proved as to "the amount embezzled."

Now, that being the sort of charge that was made, it was strongly argued on the part of the Appellant that it was proved only by inadmissible evidence; and, indeed, it is on account of this allegation that the charge was only supported by inadmissible evidence, that their Lordships have been induced to hear this case at such considerable length as they have done, because, if it had been simply an ordinary case in which it was a pure question of fact, which both the Courts below had agreed on, it would have been governed by the ordinary rule, that unless it could be clearly shown that the Court below had made some plain mistake, the judgment ought to be affirmed. Now, it is alleged that they made a plain mistake in this way. That there was a great deal of inadmissible evidence, to which both the Courts below gave weight—not only evidence which was inadmissible by the law of England, but evidence which ought not, in fairness and justice, to be allowed to have any weight.

That alleged improper evidence consisted principally of this: When the alleged frauds were in the first instance discovered, the first thing which was done was that the Collector went down to examine into the matter, and to examine everybody who could give any information upon the subject, to find out what the truth of the matter really was, and he took a great number of depositions, and no doubt examined those persons from whom he thought he could get information privately, when neither Sreekishen nor Bunseedhur were present. Now, certainly, if any substantial reliance had been placed upon those depositions—if this case could not be proved independently of them, their Lordships would have been disposed to think it would certainly have been wrong to place any weight upon their evidence. If they were alive (and there is nothing to show that any of them except Sreekishen himself were dead), they ought to have been called at the trial; and to rely upon an *ex parte* deposition of a witness who might have been called and cross-examined at the trial, would not be a practice that their Lordships would at all agree with, or think that any weight should be given to. But,

as respects Sreekishen himself, he was frequently examined; first he was examined by the Collector, and subsequently he was examined by the Magistrate, and then afterwards he was tried and found guilty; and subsequently an action being brought (into the details of which it is unnecessary to go at present,) he was examined again, and then alleged that he was innocent. Now, their Lordships do not consider that his evidence ought necessarily to be entirely rejected,—it probably would not be satisfactory to support a case upon an admission made by him alone, if the other evidence was not sufficient to amount to strong evidence against him; but if there is strong evidence against him, then probably the examinations (at any rate the examinations before the Collector) might be referred to for this purpose, at least, namely, to see if he could give any satisfactory explanation of the charges which were made against him.

Then, as respects those depositions which their Lordships think inadmissible, they do not find, on carefully considering the judgments both of the Zillah Court and of the Sudder Court (certainly of the Sudder Court), and their Lordships are disposed to think of the Zillah Court also, that any reliance was placed upon them, and, therefore, they may be rejected. The real question is, therefore, first of all taking the evidence which must be and everybody says is admissible, how does the matter stand? There are three things to be made out, that there was an embezzlement, that the sum embezzled amounted to the sum claimed, and that Sreekishen, the treasurer, had a guilty knowledge of, and was a party to those embezzlements. Now, was there an embezzlement of the amount claimed? Upon that question there really was no serious dispute in the Court below. It is charged plainly in the plaint,—the answer does not in plain terms state that there was no embezzlement at all. On the contrary, in the very first answer, the substantial defence is, that if there was an embezzlement, Sreekishen was not a party to it. But it did not rest there. All the voluminous documents with which the Government supported their case, the Bill of Discovery having been filed previously, were open to examination on the part of the Defendant.

Then the Accountants were called, and they stated what the result of all the documents was; they stated that they did show a deficiency in the accounts to the amount claimed,—that is the *only possible* way in which a fraud of that kind can be proved, because it is quite impossible for the Court itself to go into every single item of the voluminous accounts. In this country it is the practice to call an accountant, who goes through the books; he makes a summary of the accounts, and the other side are left to question them, and this case was conducted in that way. Now, the Appellant appointed persons who were perfectly competent for their duty, he being himself a large and extensive banker, and they appear to have been clerks of his own who themselves went through these accounts, and after they went through them, they were asked did they want any more documents,—was there anything that the Government could produce which they required? They said there was nothing more. They were examined. Their evidence has been read to their Lordships; and the result of that evidence is that an examination of all these documents tends to show that there was an embezzlement in these accounts to the amount stated. But they rest their defence upon this: they say these accounts do not make out that Sreekishen, the treasurer, was a party to the embezzlement. The result come to, from an examination of the accounts as they allege, is that they only show that the persons who kept the Persian accounts had been parties to the embezzlement, but that they do not show that the treasurer had been a party to it.

The question, therefore, in their Lordships' opinion is reduced to this. Is there satisfactory evidence that Sreekishen, the treasurer, was a party to these embezzlements? and that also in a great measure resolves itself into this—is there satisfactory evidence that these sums in question were received in cash at the Treasury at all? for if they were received in cash, then, according to the ordinary course of business, they were handed over to the treasurer himself; and inasmuch as the Persian clerks never handled the money, it is impossible to see, if the money really was brought into the Treasury, how, by any manipulation of the accounts,

the Persian clerks, who had not got the money, could possibly carry out these frauds or embezzle the Government money without the knowledge and assistance of the treasurer.

How then does the question stand as to the way in which the payments were made? The actual practice was this: the payments were either made in money or were made by transfer of deposits. When they were made in money from the village authorities, an authority to receive the money was procured to show that it was the intention of the person who had the money to pay in cash. He brought the money to the treasurer. The practice was that it was carried into the room where the treasurer was, and it is stated by some witness that somebody else was always there with him, and there the money was paid over. There was a receipt, and there is produced a form of the receipt for such cash payment, and that formed his receipt. Then it is the duty of the treasurer to see that that amount of money is entered in the Hindee account. Then it is also taken to the Persian clerks, and they have to enter the receipt of the money in the Persian books, and then the receipt has also to be taken to some other clerk, who enters it in the Dakhilla account-book, and then the receipt (whether before or afterwards does not clearly appear) is signed by the treasurer, and that is given to the person who brought the money. Then it would appear that he takes it back to the village authorities, and in some cases the village authority also puts his name upon the receipt.

Now, when the money is paid by a transfer of deposits, then it appears that these deposits either may be in the Treasury itself, having been previously paid in cash, or they may be in some other Treasury, as at Benares, where it may be more convenient to the landowner to make his payment. If that is the case, an order always has to be got from the Collector to authorize that transfer by way of deposit, and then that order appears to be brought to the office, and upon the authority of that order the transfer is made. Now there are many of these cases. The Court below divided them into three lists, and for the present reference will only be made to the first class; that is, where the receipts were actually given. Now, in these cases, the forms

of the receipts are set out at page 696; and the first and the strongest evidence against the treasurer is this: that the receipts are given in a form which, on the face of it, appears to be exclusively applicable to a payment in money; and looking at the form of the receipt, it is impossible to say that it does not, upon the face of it, purport to be a receipt for money. There is a number, and in the first column there is the name of the Mehal, and in the second column there is the name of the Malgozar on whose behalf the payment is made. Then there is the amount received, and the items in respect of which it is paid. Then there is the date upon which the money was deposited, which perfectly plainly means the date of the payment, which is the 30th of March, 1844, upon this receipt which is now before us. Then there is the name of the person through whom the money was deposited, which also perfectly plainly means the name of the person who brought the money to the Treasury and paid it in; and then there is the date upon which the receipt was given, which is the 30th of March 1844, being the same date as that upon which the amount was paid.

Now this is written out in Persian, and purports to be an acknowledgment of the receipt of cash. It is signed at the bottom by the treasurer himself, with a memorandum "Rupees 743. Received by "transfer by a Perwannah, No. 2669," in the particular one to which we are referring.

Now, there is perhaps some little difficulty, or, at least, their Lordships had some little difficulty in the course of the argument in discovering exactly what was the mode of giving a receipt when the payment really was made by a transfer. Although there is perhaps no direct evidence of what the form of it was when the payment was made into the Treasury by deposit, whether it was the Treasury at Mirzapore or the Treasury at Benares, no doubt some receipt, acknowledging that payment, must have been given. Several of the witnesses who were examined upon the part of the Government stated that no receipt at all was given when a deposit was transferred, at the time when the transfer was made. In the judgment of the Sudder Court which appears to have been taken principally from the allegations in the plaint, which are not

certainly specifically, if at all, denied by the answers, it is stated that at some time or other, whether the practice was first introduced by this particular treasurer or whether it was introduced before, is not perfectly clear; but, at any rate, upon many occasions a receipt was given, but that alterations were made in the form of it, as one would suppose would be the case, as otherwise it would represent what was positively untrue; and that it would contain a reference in the body of it, not merely after the signature at the end, to show that it was merely a receipt for a transfer, and that no money was paid at all at the time when it was given. Therefore the receipt forms the first evidence and very strong evidence against the treasurer.

Then that is confirmed in a great variety of instances by evidence upon the part of the village authorities, the Canoongoes, who say that, as respects those villages, they have no deposit accounts. —that it was the ordinary practice to pay in cash. That, secondly, confirms the statement that the payment was in cash. Then there is no entry of a receipt in cash in the Hindee Siaha, which would make it clear, and which in fact is not seriously denied, that if it was paid in cash, beyond all question the treasurer was a party to the embezzlement. Then in the Persian Siaha they are entered upon the day upon which the payment was made, and it is very important to observe that they are entered as paid in cash. In examining the items it is quite plain that in the body of the Siaha they are entered as paid in cash; but, of course, if they had been summed up in the abstract of the day's proceedings as having been paid in cash, then the amount of cash in the Persian Siaha would have differed from that in the Hindee Siaha, and then when the Collector came to examine the books the fraud would have been discovered directly. Therefore, though they are stated in the body of the Persian Siaha as received in cash, yet in the summing up they are not summed up in the cash column, but they are summed up as a part of those sums which were received by transfer of deposit. We also find in these Persian Siahas that day by day not only is the ultimate balance signed by the treasurer, but the pages are also signed. It is said that he does not under-

stand the Persian language, but there is no satisfactory evidence of this, and it is very improbable that the Persian clerks should have dared to go on day by day making those false entries which the treasurer could have discovered at any time.

Then, besides that, there was another clerk, who kept a book of receipts, called the Dakhilla account, in which nothing was entered except payments in cash, and in which we find these entries as being received in cash. Now, taking all that evidence of the payments being received in cash, are we to believe that the landowner or his agent who brought the money, the village authorities, the Persian clerks, the persons who kept the Dakhilla books (of whose guilt there is no evidence whatever) were all combined to cheat the treasurer, and that they should succeed during this long period of years in cheating the treasurer, though at the very time they cheated him they brought these documents day by day to him for his signature, thus giving him an opportunity of detecting them?

Moreover, if one looks at the accounts kept at the time, it will be seen that there is no reference in them to the deposit accounts from which the sums embezzled were fraudulently pretended to be taken. There is no reference to them in the Hindee Siaha, or the Persian Siaha, or in the Dakhilla book. The only place in which you find any reference to them is in the receipts themselves in the handwriting of the treasurer himself. There you find a reference to the alleged transfer, and that is not denied. It is admitted by the accountants of the Defendant, that in reality these transfers were all false and fictitious, because in reality they were not transfers from the accounts of the landowner who made the payments, but were in reality transfers from totally different accounts which had nothing to do with these particular receipts; but being afterwards, as it appears, made up in some other way, which it is not necessary to inquire into, the Courts below agreed in the belief that the money was really received in those cases, and their Lordships certainly do not see any ground at all for differing from that opinion.

This morning Mr. Forsyth has taken us through two selected instances, and we have examined and traced these two cases all through, so as to

enable us to see what was the effect of the entries; and that which has been stated has been proved in these cases. We have not thought it necessary to go beyond that, nor is it necessary to consider in detail whether there is sufficient evidence in those cases in which the entries are not produced, but only the copies of the receipts. Their Lordships must consider them as copies of the receipts, nor is it necessary to go into the detail of those cases where no receipts at all are produced, because it is quite clear that the whole of the frauds are upon one system from beginning to end; and when it is once shown and proved that there were frauds to this amount, and how they were concocted and carried out, and when it is further shown clearly from certain instances that there is evidence, beyond all question, that the treasurer was a party to them, the inference is very strong indeed that he was a party to all the frauds. It never could be believed that some of the frauds were committed with the knowledge of the treasurer, he receiving the money, and that the rest of the frauds were not practically committed in the same way.

Upon these grounds, therefore, their Lordships have come to the conclusion that the Judgment of the Court below was right, and that it was fully supported by the evidence, and hence they will recommend to Her Majesty that this Appeal should be dismissed with costs.