

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rughoobur Dutt Chowdry and another v. Futteh Narain Chowdry and another, from the High Court of Judicature at Fort William in Bengal; delivered 25th May 1872.*

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Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

THEIR Lordships are of opinion that the decree of the High Court cannot be supported.

The only question in the cause was, whether the Defendant Keerut Narain Chowdry, having borrowed Rs. 10,000 from the Plaintiffs, had executed to them the bond on which they sued; or whether, as he alleged, there had been no such transaction of loan, no money having been received by him from them, and the bond being a forgery.

The Plaintiffs, in support of their case, produced and examined the five attesting witnesses to the bond, and were themselves examined as witnesses. The evidence, if true, established the advance of the money and the execution of the bond; and was, on the latter point, corroborated by a comparison of the Defendant's alleged signature on the bond with his admitted signature of the vukeelatnamah filed by him in the cause. Against this evidence, and in support of the case of fraud and forgery set up by him, the Defendant produced only certain witnesses, who, some of them speaking on hearsay, and all giving evidence of an untrustworthy character, endeavoured to make out that the Plaintiffs' case had been fraudulently got up by one Bunseeddhur Chowdry,

against whom the Defendant had recovered judgment in another suit. None of them gave any evidence which directly contradicted that of the Plaintiffs' witnesses. Neither the Defendant himself, nor his brother, whose name appeared on the back of the stamped paper on which the bond was written, and who took an active part in the defence of the suit, ventured to put himself in the witness box; the one to deny on oath his signature of the bond, and his reception of the money; the other to deny his purchase of the stamp, or his knowledge of and participation in the transaction. In these circumstances the Principal Sudder Ameen (the Judge of First Instance) naturally found for the Plaintiffs; but on appeal, a division branch of the High Court, proceeding on certain circumstances of suspicion, which, as they conceived, the case of the Plaintiffs presented, reversed the decree of the Lower Court, and dismissed the suit against the strong *prima facie* case made by the Plaintiffs, in fact, against all the direct evidence in the cause; and in the absence of the evidence which the Defendant might have given, and, if his case were true, would naturally have given.

It is unnecessary to examine particularly the grounds of this judgment, because, whatever weight might fairly have been given to them, if there had been a conflict of evidence, it appears to their Lordships that they were entitled to no weight in a case in which the evidence was all one way. In truth the learned Judges, in thus deciding the case upon its assumed improbabilities instead of the evidence before them, have overlooked the most startling improbability of all, viz., that the Defendant should, if his case of fraud and forgery were true, have failed to attempt to substantiate it by his own testimony and that of his brother. Their Lordships therefore feel that they would be sanctioning a mode of decision which would be productive of the worst consequences in the administration of justice, if they were not to advise Her Majesty to

allow this Appeal to reverse the decree of the High Court, and to order, in lieu thereof, that the Appeal to that Court from the decree of the Principal Sudder Ameen be dismissed, with costs. The Appellants will also be entitled to the costs of this Appeal. The decree of the Principal Sudder Ameen for the sum sued for, and the costs in that Court, will, of course, be against the original Defendant, Keerut Narain Chowdry, and be recoverable out of his estate. But the present Respondent, who appeared to the Appeal to England, but lodged no printed case, will be personally liable for the costs incurred here and in the High Court, and to refund any costs which may have been paid to him or on his account by the Appellants under the decree of the High Court. Their Lordships desire to add that they see no ground for the censure cast by one paragraph of the judgment of the High Court upon the Principal Sudder Ameen, who seems to their Lordships, in a well reasoned judgment, to have come to the only conclusion to which, upon the evidence before him, he ought to have come.

