Judgment of the Judicial Committee of the Privy Council on the Appeal of Hussain Ali Khan v. *Khursaid Ali Khan and Ashgar Ali Khan, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered March* 16*th* 1882.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE Plaintiffs in this case are two sons of Aftab Ali Khan, who appears to have died as long ago as 1840 or 1841, leaving them infants, together with a younger brother Ahmed. The Defendant is their father's brother, and was entitled to half of the joint estate of the family. Each of the brothers, in addition to having a share in the other half of that estate, had separate properties, consisting of villages and other tenements. The Defendant acted as manager of the property, and seems to have given no accounts, or accounts to a very limited extent, to his nephews, during a very long period, indeed up to the year 1875. In the spring of that year the Plaintiffs required accounts from him, and on the 21st and 23rd of May various accounts were given by him, with respect to which the subject of this action arises.

The case of the Plaintiffs is that the Defendant rendered four accounts: one to Khursaid, separately, admitting an amount due of, in round numbers, the sum of Rs. 23,000; another to Ashgar, separately, admitting an

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amount due of, in round numbers, Rs. 5,000; and with respect to these accounts no dispute arises. The Plaintiffs' case further is, that with respect to the zemindary the joint property of the family, the Defendant rendered an account showing that the three brothers were each entitled to a third of Rs. 74,800, comprising arrears of about 13 years; and they allege that a deed of acquittance was executed, that the sum of Rs. 74,800 was paid to the two brothers in June, and that a note was given by the Defendant for Rs. 74,800, and that that note was returned to him upon the Rs. 74,800 being paid. They further say that there was a fourth account, containing a statement of an amount deposited by the Plaintiffs with the Defendant at various times times, which was furnished by and was signed by the Defendant. It consists of various items: Rs. 25,000, deposited on the 2nd of November 1866; Rs. 34,000, on the 25th of May 1870; Rs. 3,000, on the 3rd of July 1870; and "Profits on account of interest of Mursan, &c.," Rs. 9,331, making Rs. 98,331, from which was deducted Rs. 15,133 4a. 3p., the alleged value of a house with some land sold by Defendant to Plaintiffs, leaving, on the balance, a sum of Rs. 83,111 11a. 9p. The Plaintiffs allege that the Defendant gave them a promissory note for this amount in these terms: "Rs. 83,111 11a. 9p., half of which " is Rs. 41,555 13a. 10½p., deposited by you, are " held by me as a trust. I agree that whenever " the said sum of Rs. 83,111 11a. 9p. will be " demanded by you I shall pay the same in cash " at once, without any objection or argument." They gave evidence of the execution by the Defendant of this note, and based their suit upon it.

The case of the Defendant is that there were only three accounts; that this last account

which the Plaintiffs set up is altogether a fabrication; that he gave no such promissory note, and signed no such account. He further goes on to set up a case of his own. By that case he admits that the very sum claimed, viz., Rs. 83,111 11a. 9p., was due from him, but he says that was on the zemindary account, and made up by deducting from the whole amount, Rs. 88,531 11a. 9p., Rs. 5,419 5a. 3p. paid to Ahmed at the request of his brother, leaving Rs. 83,111; that on that zemindary account he gave a promissory note for this amount; that he paid it, sending the money by rail on the 7th of June; that this promissory note for Rs. 83,111 11a. 9p. was returned to him, and was that which he produced.

That, in outline, is the case of the respective parties.

It should be mentioned that another suit was brought sometime before this suit,—we have not the exact date,—by the third brother Ahmed, in which suit the present Plaintiffs were the real Defendants and the present Defendant a nominal one. Ahmed's case, as far as their Lordships are able to collect it from the materials they have, coupled with the short judgment in appeal, was, that not Rs. 74,800 was paid on the zemindary account, but Rs. 83,111; and he claimed his share of that amount. It may be assumed that his brothers did not deny his title to the share of the smaller amount; so the question seems to have been, which was the right amount—Rs. 74,800 or Rs. 83,111. Both Courts decided against Ahmed that the sum paid in respect of the zemindary account was Rs. 74,800, and not Rs. 83,111. It should be stated that the same Subordinate Judge who decided against Ahmed in his suit found for the Defendants in the present suit; that his judgment was reversed by the High Court, from whose

judgment the present Appeal has been brought. The High Court refer to the two judgments of this Judge in the two cases, and seem to infer that those judgments are not in all respects quite consistent with each other. It appears to have been agreed that the evidence in Ahmed's suit might be referred to in this.

Undoubtedly, there is some force in the observation on the part of the Appellant that the Plaintiffs give very unsatisfactory evidence of the manner in which the items of the account on which they rely are made out. Their evidence of having received large sums of Rs. 25,000, Rs. 34,000, Rs. 30,000, from their grandmother, is of a very loose and unsatisfactory character. It is also to be observed that, in respect to a large item of Rs. 34,000, Ashgar, whose money it is alleged to have been, is not called, and that we have only the evidence of his servant, who deposes to having deposited it.

But their Lordships are called upon by the Appellant to reverse a decision of the High Court which turned mainly on the question whether or not the promissory note put in by the Plaintiffs, as executed by the Defendant on the 23rd of May 1875, was genuine. If that promissory note were genuine their case was proved.

Although the Defendant presented himself as a witness in the former case, thereby showing that he had no religious or other objection to giving evidence in a court of justice, and although he there distinctly deposed to the truth of his story in that case, namely, that Rs. 83,111 were paid on the zemindary account, yet in this case he gives no evidence. In this case a new question arises which did not arise in the former; namely, as to the promissory note which he is alleged to have given for Rs. 83,111, upon the 23rd May, 1875, for the balance of the deposit account.

The making of that note is deposed to by three or four witnesses who are described as zemindars, and whose respectability is not impeached. Disputing the genuineness of that note, he was bound to come forward and swear that it was not his, or at all events to call some witness who would say that it was not in his handwriting, or that it did not resemble his handwriting. The case now stands thus: a document of the utmost importance is put in by the Plaintiffs, enough of itself, without any other evidence, to support their case. The Defendant declares it to be a forgery, but gives no evidence whatever of its not being genuine.

If the case rested there, their Lordships would feel very great difficulty in reversing the judgment of the High Court; but it does not rest there. An essential part of the Defendant's case is not only that the note is a forgery, and that the account which he is alleged to have signed was also a forgery, but that the sum of Rs. 83,111 was due on the other account, the zemindary account, and that the only note he gave was on that account—the very note which was returned to him and which he produced. This has been found against him by two Courts. It has been found against him by the very Judge who has decided in his favour in this case, and therefore it must be assumed that with respect to that part of the transaction the Defendant's statement that the zemindary account was not for Rs. 74,800, but for Rs. 83,111, is false. But this assumption draws with it consequences of a very serious kind; viz., that the Defendant has put in several documents which are forgeries. The note (as it is called) before referred to, which he alleges to have been returned to him, and which he produced, is in these terms:—" Rs. 88,531 : 1 were found, " according to the detail given in the account " and the abstract statement, as your half share

" of the profits of the joint estate of Jausath " for 13 years. Out of that you received " Rs. 5,419 : 5 : 3 in cash; and the balance, " Rs. 8,311 : 11 : 9, half of which is " Rs. 41,555 : 13 : 10½, are deposited with me. " The amount will be paid without objection at " any time you should require. After paying " the sum herein specified, I shall take back this " note of hand." The Plaintiffs' case is that no such promissory note was given by the Defendant, but that another promissory note for Rs. 74,800 was given by him. The finding which has been mentioned necessarily involves the fact that the note put in by the Defendant is a forgery.

It should further be observed that he puts in a letter of the Plaintiffs dated the 5th June 1875, in which they mention this sum of Rs. 83,111. It runs thus; " After paying my respects to you, " I beg respectfully to state that here at Meerut " I require the money which has been deposited " with you through dear brother Ashgar Ali " Khan. Hence I beg that you will kindly " send all the money which is in deposit, *i.e.*, " Rs. 83,111 : 11 : 9, to Meerut, through Ghasi " Ram, treasurer." The Plaintiff Khurshaid declares that this letter has been tampered with, that it was a general request to pay all money due, and that the " Rs. 83,111," which appears here to refer to the zemindary account, was interpolated. It is to be observed in respect to this that the High Court express their opinion that it was interpolated, and also state that the Judge of the Court below, whose judgment unfortunately we have not, was of the same opinion.

There are some further letters which have been referred to by the High Court, published in the supplementary papers, which their Lordships agree with the High Court have a considerable bearing in favour of the Plaintiffs' case. The first is exhibit A, in which the Defendant writes,

" I more than once requested you to return me " the notes of hand which you had got me to " write on 23rd May 1875, and to take your " money, which would be paid up by the end of " July, but you did not believe me. There is no " complication in this matter, and it could be " done now also. Please pay attention also to " what I say; you got me to write a note of " hand for Rs. 74,800 on 21st May, although " there was no need for it." The High Court find that this letter is unimpeachable. It is true that it is denied by the Defendant to be in his writing, but their Lordships concur with the High Court that it must be taken to be a genuine letter. If so, it contains an admission in the Defendant's own hand that the case set up by him in respect of the amount of the zemindary account was a false one.

There is another letter referred to by the High Court (exhibit D), which the Defendant in his examination in Ahmed's case does not deny to be his. He simply observes that the signature resembles his. This letter, dated July 12, 1875, contains this passage: " If you wish I can bring " the private money with me, and you can take " the same from me, and at the same time you " can send for the *three* notes of hand which " are with Khurshed Ali Khan." According to the Defendant's contention, there would be only two notes of hand with Khurshed Ali Khan; there were only three altogether, and one had been returned to him.

On these grounds, although the case of the Plaintiff is to some extent unsatisfactory *quoad* the proof of the sums which they obtained from their grandmother and deposited, their Lordships on the whole think that that case, resting mainly upon a promissory note deposed to by several witnesses apparently of respectability, and which has not been seriously impugned on the

other side, and is fortified by the decision in the other case, is too strong to justify them in reversing the judgment of the High Court.

Under these circumstances, their Lordships will humbly advise Her Majesty that the judgment under appeal be affirmed, and that this Appeal be dismissed with costs.