

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Miller v. Sheo Parshad, from the High Court of Judicature for the North-Western Provinces of Bengal, delivered 15th March 1883.

Present :

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

This is an appeal in a suit brought in the Court of the Subordinate Judge of Cawnpore by Mr. A. B. Miller, the official assignee of the High Court at Calcutta, as the assignee of the estate and effects of Lala Baij Nath, deceased Bansidhar, and Ghasi Ram, insolvents. Baij Nath and Bansidhar were brothers, and Ghasi Ram is the son of a deceased brother, Sitaram, and they carried on business in partnership at Calcutta, Lucknow, and Cawnpore, as bankers and piece-goods merchants. The firm at Calcutta was Nanu Mal, at Cawnpore Bansidhar Ghasi Ram, and at Lucknow the banking business was carried on under the style of Choté Lal Sitaram, and the piece-goods business of Bansidhar Ghasi Ram. The business at Calcutta was managed by Bansidhar, that at Lucknow by Baijnath, and that at Cawnpore by one Sheo Dial as munib (agent). The Calcutta firm stopped payment at midnight on the 20th of December 1875, and were adjudicated insolvents on the petition of two of their Calcutta

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creditors, on the 22nd of December. The Defendant carried on business at Lucknow under the style of Sheo Parshad Khazanchi. His business was managed by his brother-in-law, Paras Ram, who was himself a partner in a firm at Cawnpore styled Paras Ram-Beni Madho.

The official assignee in his suit alleged that one Munshi Ram Parshad, a resident of Lucknow, owed Rs. 9,436 to the banking firm of Choté Lal Sitaram at Lucknow, and that Baijnath, who died in 1876, colluded with the Defendant Sheo Parshad, and fraudulently transferred this debt to him, and in the account book wrongly entered the date 21st December 1875, and that the Defendant had recovered the debt from Ram Parshad, and the official assignee demanded the amount of it, with interest.

The Defendant in his written statement said that there were dealings between his firm and the firm of Choté Lal Sitaram at Lucknow; and with reference to the money dealings from the 13th July to the 14th December 1875, Rs. 9,452 were found due by Baijnath, and on the 20th of December 1875 Ram Parshad drew, under the assignment of Baijnath, a rukka for Rs. 9,452 through Paras Ram, on account of the money due to the Defendant upon one Kanhaia Lal, deceased, a banker resident at Lucknow; that Kanhaia Lal, according to the rukka, dated 20th December 1875, made entries in his own firm, according to banking usage, against the Defendant's name, in respect of the item of Rs. 9,452, and the said item is shown in Kanhaia Lal's account books to the Defendant's credit.

On the 16th of April 1878 the Subordinate Judge recorded as the issues in the case :—

1. When did the transfer of the principal sum in suit take place? Is the transfer unlawful, and was it fraudulently made or not?

2. Is the Plaintiff entitled to interest?

On the 11th September 1878, before he proceeded to take evidence, he questioned the pleaders of both parties, and recorded that the Plaintiff's pleader stated that the Plaintiff claimed to have the transfer declared invalid, on the grounds,—

1st. That it was really made after the 22nd of December 1875, and was made fraudulently.

2ndly. Even granting that the transfer took place before the 22nd December, it was voluntarily made, and was invalid under Sect. 24 of the Indian Insolvency Act.

The Subordinate Judge does not appear to have made any alteration in the issues which he had recorded, but their Lordships think this was not necessary, and that the question whether the transfer was voluntary and fraudulent and void as against the assignee was sufficiently raised.

The Subordinate Judge made a decree for the Plaintiff for Rs. 9,436. 12 and Rs. 2264. 13, interest thereon, for reasons which will be afterwards mentioned, and this was reversed by the High Court, which dismissed the suit, with costs.

Their Lordships have come to the conclusion that the transfer was voluntary, within the meaning of Sect. 24 of the Indian Insolvency Act, 11 & 12 Vict., c. 21. That section is :—

“And be it enacted that if any insolvent who shall file his petition for his discharge under this Act, or who shall be adjudged to have committed an act of insolvency, shall voluntarily convey, assign, transfer, charge, deliver, or make over, any estate real or personal, security for money, bond, bill, note, money, property, goods, or effects whatsoever, to any creditor, or to any other person in trust for or to, or for the use, benefit, and advantage of any creditor, every such conveyance, assignment, transfer, charge, delivery, and making over, if made when in insolvent circumstances, and within two months before the date of the petition of such insolvent, or of the petition on which an adjudication of insolvency may have proceeded, as the case may be, or if made with the view or intention, by the party so conveying, assigning, transferring, charging, delivering,

or making over, of petitioning the said Court for his discharge from custody under this Act, or of committing an act of insolvency, shall be deemed and is hereby declared to be fraudulent and void as against the assignees of such insolvent."

The Plaintiff having proved, by a deposition taken at Calcutta, that the order of adjudication was made on the 22nd December, examined as a witness Sheo Dial, who was the agent of the insolvent firm at Cawnpore, and became the servant of the official assignee. He said the account books of the firm of Chote Lal Sitaram at Lucknow were stolen on the 11th of March 1878, and in December 1877 he examined the account of the Defendant in those books. He produced a memorandum, from which he stated that on the 21st of December 1875 Rs. 9,636 12 annas were entered on the credit side, and Rs. 9,436 12 annas on the debit side, in the cash book of Chotey Lal Sitaram, after adjustment, and by both these items the account of Sheo Parshad was closed in this way, that there was a balance of Rs. 200 due by Sheo Parshad,—that the firm at Cawnpore was under his management, and at 4 a.m. on the 21st of December he learnt from Bani Madho (not the brother of Paras Ram) that the firm of Baijnath had failed. The items entered in the account books were in Baijnath's handwriting.

The principal witness for the Defendant was Paras Ram, who said:—

"I was manager (*muhtamin*) of the firm of Lala Sheo Parshad, situate at Lucknow, and used to do all the work of the firm of Lala Sheo Parshad. Rs. 8,500 were due by the firm of Baij Nath, styled the firm of Chotey Lal and Sita Ram, up to the 20th of December 1875, in this way, that there were three hundis drawn by Baij Nath, aggregating to Rs. 7,500, and a currency note for Rs. 1,000 was lent to Baij Nath—that up to the 20th December 1875 the term of none of the three hundis had expired. Before the 20th of December 1875 I had pressed the demand for Rs. 8,500 on Baij Nath, and the reason for my making the demand before the expiry of the term of the hundis was that Baij Nath, having drawn a hundi for Rs. 5,000, had gone to the Bank of Bengal

for borrowing money, and the agent to the Bank of Bengal at Lucknow refused to give money, saying that he had been prohibited to receive his (Baij Nath's) hundis by the Calcutta (Bank), and consequently he would not take his hundi. This happened two or three days previous to the 20th of December 1875, consequently I made the demand on Baij Nath on 20th December 1875, and he then caused Rs. 8,500 to be paid by Munshi Ram Parshad. I had told Baij Nath to give me Rs. 8,500 in cash. Baij Nath then said, 'I have no money in cash; money is due to me from Munshi Ram Parshad. Accompany me, and I will make him pay money to you.' I immediately proceeded with Baij Nath to Munshi Ram Parshad's house, and Baij Nath said to Munshi Ram Parshad, 'Lala Sheo Parshad is pressing his demand hard on me; give whatever money is due to me by you.' Munshi Ram Parshad then, having adjusted the account, struck a balance of Rs. 9,452 against himself, and he drew a ruqqa on Kanhaia Lal, banker, resident of Lucknow, to the effect, 'Pay Rs. 9,452 to Lala Paras Ram,' and Kanhaia Lal, on seeing the ruqqa, debited Rs. 9,452 to Munshi Ram Parshad in his account books, and credited the same to my account. Some of those persons who have monetary dealings with the firm of Lala Sheo Parshad at Lucknow sometimes make debit and credit entries in my name in their account books, but the monetary dealings are carried on for the firm of Lala Sheo Parshad. Baij Nath caused Rs. 9,452 to be paid to me by Munshi Ram Parshad, for this reason, that Rs. 8,500 were paid in the account of Lala Sheo Parshad, and Rs. 525 were given, it being due to Kanhaia Lal, on whom the ruqqa was drawn, and Rs. 427, due to the firm of Paras Ram and Beni Madho in Cawnpore, was caused to be paid. At the time when Munshi Ram Parshad wrote the ruqqa on Kanhaia Lal for Rs. 9,452, Lachman Parshad Daroga, Maulvi Faqir-ul-ah, Lala Baij Nath and I were present, and Munshi Ram Parshad, having written the ruqqa, had given it to me before Baij Nath, and took back a ruqqa of his from Baij Nath. I sent for ruqqa written by Munshi Ram Parshad to Kanhaia Lal through Becha, peon employed in the Bank, and Kanhaia Lal, on seeing the same, accepted it. At the time when the sum of Rs. 427 was caused by Baij Nath to be paid to the firm of Paras Ram—Bani Madho, the whole amount due to Paras Ram—Bani Madho had not been paid in full. The debit and credit entries in the books of the firm of Lala Sheo Parshad were made on the 31st March 1876, in respect of Rs. 9,452. The debit and credit entries, regarding the ruqqa of the 20th December 1875, were delayed and made on the 31st March 1876, because when the accounts of Kanhaia Lal were compared then this item was debited and credited; this item was not an item of cash, and consequently it was not debited and credited immediately."

The Judge, on the 26th of August 1878,
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ordered a commission to be issued to three experts to examine the Defendant's account books, and on the 11th of September 1878 they reported as follows :—

“The item of Rs. 9,452, entered in rokar-bahi (cash-book), page 218, as credited to Chotey Lal Sitaram, on account of assignment made against Munshi Ram Parshad, has been credited on 6th Sudi Chait, Sambat 1933, corresponding to 31st March 1876, and in its detail the following words are written, ‘8th Badi Pus, debited to Kanhaia Lal, caused to be paid by Munshi Ram Parshad.’ The items comprising this item appear to be entered on the debit side as follows :—

“Page 181. 3rd Badi Pus, Sambat 1932, corresponding to 15th December 1875, one note, No. 88,969 L-53, R. A. P. through Umrao Ali - - - 1,000 0 0

“Page 26 of the naql (bahi). 2nd Badi Pus, Sambat 1932, one hundi, drawn by Chotey Lal Sitaram at Cawnpore upon Bansidhar Ghasi Ram, payable 61 days after 2nd Badi Mangsar, credited to Surat Changa Mal, and money paid on 13th Badi Pus - 2,500 0 0

“Page 218 of rokar-bahi. 6th Sudi Chait, Sambat 1933, corresponding to 31st March 1876,—

“One hundi drawn on Calcutta by Chotey Lal Sitaram, upon Nannhu Mal, in my (i.e., Sheo Parshad's) favour, payable 51 days after 5th Sudi Mangsar, credited to Ajudhia Parshad - 2,500 0 0

“One hundi drawn at Cawnpore by Chotey Lal Sitaram, upon Bansidhar Ghasi Ram, in favour of Paras Ram, payable 61 days after 5th Badi Bangsar, credited to Gur Parshad Shukal - - 2,500 0 0

“On Pus Badi 8th, Sambat 1932, credited to Kanhaia Lal - - 525 0 0

5,525 0 0

“Page 264 of rokar-bahi. 6th Sudi Bhadon, Sambat 1933, corresponding to 25th August 1876, credited to Lala Paras Ram, and debited to Chotey Lal Sitaram - - - 427 0 0

“All these items amount to Rs. 9,452, mentioned above.”

Except the entry in the cash book, the only evidence of the loan of Rs. 1,000 is the vague

statement of Paras Ram that a currency note for Rs. 1,000 was lent to Baijnath, but their Lordships will take it as a fact that this sum was lent on the 15th of December. The next three sums of Rs. 2,500 each are the amounts of three hundis drawn by one of the insolvents' firms upon another of them. These hundis were drawn in favour of Paras Ram, as the Defendant's agent, and had been discounted by him, and were on the 20th of December in the hands of third persons. They were subsequently taken up by the Defendant, or debited to him by the holders. There was thus a contingent liability on the part of the Defendant on these hundis, and on the 21st of December the parties must have had full knowledge that they would be dishonoured. Their Lordships are not prepared to say that the transfer, so far as it provided the Defendant with funds to meet the hundis, would as a matter of law be voluntary within the meaning of the Insolvent Act, but the transaction was out of the ordinary course of business, and there was no satisfactory explanation of the delay in making the entry of it in the Defendant's books.

Looking at this part of the transaction alone, there is strong *prima facie* ground for thinking that it was done with the view of preferring the Defendant. But the hundis are mixed up with the other items, and the whole formed one transaction. The next item is the Rs. 525 said to be credited to Kanhaia Lal on the Hindu date corresponding to the 20th of December. But it is taken from page 218 of the cash book, and was not entered in it till the 31st of March 1876. As to this sum there is only Paras Ram's statement that it was due, and the evidence of Bhondu Mal, who said, "Baijnath Lal had given permission to Kanhaia Lal to make a deduction of Rs. 525 from the amount of the ruqqa. This permission was received two days before

“ the execution of the ruqqa, and for two days I “ had been demanding money from Baijnath.” The remaining item of Rs. 427 was not credited to Paras Ram and debited to the insolvents’ firm until the 25th of August 1876, and is clearly a voluntary payment.

Turning now to the books of Kanhaia Lal, their Lordships find fresh cause for suspicion. They were produced by Bhondu Mal, his grandson, he having died on the 30th of November 1876. As to these books, the report of the experts, to whom they were referred for examination, is as follows :—

“ In obedience to your order, we have inspected and examined the said account books, and it appeared to us that the accounts of Paras Ram are entered at leaf 56 of these account books. In it, on the credit side, an item of Rs. 9,452 is entered, with reference to the day-book, leaf 127, in this way—‘ Credited to ‘ Paras Ram on Pus Badi 8th, Sambat 1932, Anglice 20th ‘ December 1875, (and) debited to Munshi Ram Parshad.’ In the same day-book, at leaf 127, Rs. 9,452 are debited to Munshi Ram Parshad, and in its detail the following words occur :—‘ Pus Badi 8th, Sambat 1932, Anglice 20th December ‘ 1875, credited to Paras Ram the amount of a ruqqa.’ In this day-book the first three leaves have not been paged, and then the 4th leaf has been paged, and the account commences to be written on the back of the leaf marked 4, and the pages have been regularly numbered up to leaf 116. The next leaf should have been numbered 117, but in this day-book leaf 127 is in place of 117; from leaf 117 up to 126, ten leaves are wanting in the account book. In this day-book, at leaf 127, an item of Rs. 13. 2. 3 is debited to Kanhaia Lal, and in the account of Kanhaia Lal the said item of Rs. 13. 2. 3, which is entered on the debit side, has been posted from the day-book, and leaf 117 is mentioned. The cash balance, which has been struck in the day-book, is in regular order.”

This view was adopted by the Subordinate Judge, and it is unnecessary to state what he said.

Another suspicious fact is, that the ruqqa, which was drawn by Ram Parshad, says, “ Rs. 10,352 were due to Lala Baijnath Khaz-
“ anchi by me under a ruqqa, dated 17th May
“ 1875, bearing my signature. Now I draw this
“ ruqqa in your favour, to the effect that, under

“ his assignment, I am causing Rs. 9,452 to be
“ paid to Lala Paras Ram, on account of his
“ debt,” and there is no evidence that any part
of the Rs. 10,352 had been paid by Ram Parshad.
For aught that appears, the balance of Rs. 900
may have been given up to Ram Parshad.

These are the material facts in the case, and
upon consideration of all the circumstances,
their Lordships have come to the conclusion that
the transfer was voluntary within the meaning
of the Insolvent Act, and fraudulent and void
as against the assignee.

It is therefore unnecessary to decide whether
the transfer was made on the 20th of December.
The Subordinate Judge put the burden of proof
of this upon the Defendant, and found that it
was not; and inferring from this and the entries
in the Defendant's books, and the abstraction of
the leaves from Kanhaia Lal's books, that it was
made after the 22nd of December he made a
decree for the Plaintiff. Their Lordships are not
prepared to say that he was right as to the burden
of proof, or whether his conclusion as to the time
of the transfer was a right or a wrong one; but
they consider that justice to him requires them
to say that, so far from thinking, as the Chief
Justice in his judgment on the appeal says, that
“ the Subordinate Judge does not appear to have
“ understood the law on the subject, but has
“ occupied himself with irrelevant and trivial
“ considerations and details quite immaterial to
“ the case,” they are of opinion that he had before
him a case upon which he might come to the
conclusion to which he came. Their Lordships
will humbly advise Her Majesty to reverse the
decree of the High Court, and to affirm the decree
of the Subordinate Judge, with costs. The Re-
spondents will pay the costs of this appeal.
