

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Babu
Lachmi Parshad v. Maharaja Narendro
Kishore Singh Bahadur, from the High Court
of Judicature for the North-western Provinces,
Allahabad, delivered November 19th, 1891.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Lord Morris.*]

THIS is an action brought by a Banker, or money-lender, against the heir of the deceased Maharaja, Rajendro Kishore, for the recovery of a sum of Rs. 12,000, and interest, alleged to have been borrowed from him by the Maharaja shortly before his death. The transaction is said to have occurred on the 28th November 1883, and the Maharaja died on the 27th December following. In an action brought to recover money against an executor, or, as in this case, the heir, of a deceased person, it has always been considered necessary to establish as reasonably clear a case as the facts will admit of, to guard against the danger of false claims being brought against a person who is dead and thus is not able to come forward and give an account for himself.

The present case depends upon the testimony of two persons, Beni Misr and Sukhdeo, who detail a transaction which is in many respects of an improbable character, and would in any

event require corroboration. Beni Misr is the gomashtha of the plaintiff. Sukhdeo appears to be a broker. He is described, in the judgment of the High Court, as a person who "hangs about the Bazaar ready to give his services in any way people may feel disposed to employ him . . . a sort of tout, willing to mix himself up in any sort of transaction, out of which he can obtain some remuneration for his trouble." He says that he was one day accosted by a servant of the Maharaja, named Dammal Pande, and requested to raise a loan for the Maharaja. He describes the conversation between himself and Dammal Pande, and his going to Beni Misr. He relates the terms upon which Beni Misr agreed to the loan for the Maharaja, namely, 1 per cent. per mensem, and how Beni Misr required that the Maharaja should execute a document upon a *hundi* or stamped paper. He describes how he went back to Dammal Pande and informed him of the terms of the loan, how Dammal Pande went inside the house where the Maharaja was, and came back saying that the Maharaja agreed to the terms, and how he got a sum of Rs. 9 from Dammal Pande to purchase the *hundi* paper. He says specifically that he purchased the *hundi* paper "a day before that on which the Maharaja signed the *hundi*," namely, on the 27th November 1883. But the *hundi* paper has upon it the memorandum of the date of its sale, namely, the 28th November 1883, the day upon which the Maharaja is alleged to have signed it. It is, therefore, in the absence of explanation, impossible that he could have bought it on the 27th, seeing that on the face of it it purports to have been issued on the 28th. The evidence of Sukhdeo, therefore, at the outset is met by this grave discrepancy, which is not a mere inaccuracy of date, but an inaccuracy which

goes to the very root of the transaction which he purports to describe.

The other Witness, Beni Misr, deposes to the fact of his having accompanied Sukhdeo to the house of the Maharaja. There is some want of distinctness as to whether he alleges that he saw the Maharaja sign the parwana or not. He only states that the Maharaja signed it; whereas Sukhdeo says that he and Beni Misr went into the Maharaja's room, and that the Maharaja signed it. Their Lordships would point to the difference between his having merely said that the thing was done, and his having said that he had seen it done.

The case of the Plaintiff, therefore, who appears to have had no personal dealing whatsoever with the Maharaja in this transaction, and who never saw him, depends altogether on the evidence of Beni Misr and Sukhdeo, and by their evidence he must stand or fall. There has been no corroboration of any kind of the story of these two witnesses brought forward on the part of the Plaintiff. Indeed at the trial, and certainly in the argument of Counsel on his behalf here, Counsel seemed to think that the fact of two men having sworn to the signature of the Maharaja to this instrument establishes the case so completely as to render it almost unnecessary to corroborate it in any particular. Their Lordships cannot concur in that view.

The transaction is open to a good deal of comment, both as regards its inception and the mode in which it was carried out. The Maharaja had persons who were acting for him in the management of his affairs of considerable importance in his household, and it seems unlikely that Dammal Pande would have been employed at all by him in the matter. Then there is the significant fact of this large sum of

money being raised by him just a month before his death, and with nobody of his household, apparently, brought into privity with it, or knowing anything about it. The discrepancy of date has been already mentioned. There is also a certain degree of difficulty attending the fact that the *parwana* purports to be drawn at 12 months' date, whereas no application for the money appears to have been made for some months afterwards, at all events to Mr. Gibbon, the manager, to whom the Plaintiff ultimately wrote. He alleges in his first letter to Mr. Gibbon, of the 30th March 1885, that he had previously written for the money, but there is no distinct testimony of that. A reply was written to him by Mr. Gibbon, requiring to know for what necessary purpose, in what manner, and through whom the money was advanced, and what evidence the Plaintiff had in his possession that it was advanced, seeing that it did not appear from the inquiry and statements of the managers of the private expenses of the Maharaja that it was drawn by him. To that letter the Plaintiff does not appear to have given any direct answer. He alleged that he was ready to shew the *parwana*, but he passed by all the other demands made upon him to state the circumstances under which the money was advanced. Possibly, as stated by Counsel for the Plaintiff, parties in India, when a dispute on such a matter has arisen, may be chary of shewing their hand, and although they have an honest case may wish to state as little as they can when they see that their claim is going to be resisted.

The *parwana* purports to declare that a thing had been done which in reality was only going to be done; because it says, "As you have " paid Rs. 12,000 to Mussamat Sarab Mangla

“ according to my permission, this money is due
 “ to you from me; and so I declare it in writing
 “ that I shall pay to you the principal amount,
 “ together with interest at 1 per cent. per
 “ mensem, within a year, and take back this
 “ *parwana* ”—whereas in any case the money
 had not been paid at that time. The explanation
 given is that the *parwana* was entrusted by the
 Maharaja to one of his own servants to be
 deposited with Sarab Mangla, and that she was
 not to hand it over until she had actually got
 the money.

In addition to her handing over the *parwana*
 the Plaintiff appears to have required from her
 a receipt for the money, which has been relied
 upon by him as being a document of the last
 importance. It is in the following terms:—“ I,
 “ Sarab Mangla, do declare that according to a
 “ *parwana* of the Maharaja of Bettiah,
 “ with a direction for payment of money to me,
 “ I have received the sum of Rs. 12,000 in a
 “ lump sum from them through Sukhdeo, Girdhar
 “ Das, and Beni Misr, and there is now nothing
 “ due. I have therefore granted this receipt in
 “ order that it may be of use when needed.”

That document, as well as the *parwana* itself,
 is impeached as a forgery. As regards the
parwana itself, there is the evidence in favour
 of it, as has been already observed, of Beni Misr
 and Sukhdeo. As against it there is the evidence
 of three witnesses on the question of handwriting,
 namely, Mr. Gibbon, an Englishman, who was
 the manager of the Maharaja; Madho Narain,
 his paymaster; and Har Pershad, his office-
 keeper. These three witnesses all depose that
 the signature to the *parwana* is not in the hand-
 writing of the Maharaja. Sarab Mangla deposes
 that she never got the Rs. 12,000, and that
 the receipt referred to does not bear her signa-
 ture.

If these documents were forgeries it does not follow that the Plaintiff is involved in them. He may have given his money, and upon the evidence it would appear that he did give his money, to Beni Misr, to be handed over to the Maharaja. He may have been misled by Beni Misr, and Beni Misr and Sukhdeo may have been in a conspiracy to obtain the money for themselves, and the money may have gone from the coffers of the Plaintiff, and still never have reached Sarab Mangla whom the Maharaja is said to have expressly ordered to receive it. It therefore does not appear to their Lordships that it is at all necessary to hold, nor that there is evidence in the case which would lead to the conclusion that the Plaintiff was in any way a party, or privy to such a transaction.

It should never be forgotten that the onus of proof in this case lies upon the Plaintiff. It is for him to satisfy their Lordships that he has established a reasonably clear case. But he has failed to bring forward the evidence which he ought to have done, when he knew that this transaction was called in question, and that the *parwana* and the receipt were impeached as forgeries. There are no less than five persons who ought to have been called in support of his case, but were not. The first person was the Plaintiff himself, although, as their Lordships have already said, there is no evidence establishing that he was party to this attempt to fix an untrue liability upon the heir of the Maharaja. It would have been better, to say the least of it, if he had come forward and described the transaction so far, at all events, as he was able. But he did not come forward. The second Witness, whose evidence would have been of the last importance, was Dammal Pande, for he appears, according to Sukhdeo's testimony, to have been the person who initiated the transaction by going to Sukhdeo, and saying that

he had been asked by the Maharaja to obtain the Rs. 12,000. But Dammal Pande was not produced. The third missing Witness was Bhagauti Parshad. He is said by Sukhdeo to have written the receipt, to have taken it to Sarab Sangla for her signature, to have obtained her signature to it, and to have given it with the *parwana* to Beni Misr. His evidence would have been most material. But he was not called. The absence of Girdhar Das is still more extraordinary. He is named in the receipt as being one of the three persons who paid over the money to Sarab Mangla, the other two being Beni Misr and Sukhdeo. Yet he was not called. Neither has there been any attempt to identify the Muharrir, to whom no name has been given, who was alleged to have written the *parwana* itself. It was suggested that he was the same person as Bhagauti Parshad, who wrote the receipt. But no evidence has been given that this was so.

Thus, all the probabilities of the case are against the Plaintiff. The evidence of the handwriting is distinctly against him, and he has in no way corroborated, as he might have done, the testimony of Beni Misr and Sukhdeo. Neither has any trace been found in the books of the Maharaja of any loan of this sort. To this Counsel for the Plaintiff replied that, it being a loan to this lady, who was his mistress, it was not a transaction that would be likely to appear in the Maharaja's books. But the fact nevertheless remains that no trace of it can be found there.

It appears to their Lordships that the decision arrived at by the High Court on appeal from the Sub-Judge of Benares, is right, and they will humbly advise Her Majesty to affirm the Decree of the High Court, and dismiss this appeal. The Appellant must pay the costs of the appeal.

