

*Privy Council Appeal No. 109 of 1918.*  
*Allahabad Appeal No. 34 of 1916.*

Robert Skinner, alias Sardar Mirza, and others - - - *Appellants*

*v.*

R. H. Skinner and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH WESTERN  
PROVINCES, ALLAHABAD.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 28TH NOVEMBER, 1919.

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*Present at the Hearing :*

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

SIR LAWRENCE JENKINS.

[*Delivered by MR. AMEER ALI.*]

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The question for determination in this appeal lies within a very narrow compass. The plaintiffs, Robert Skinner and Thomas Skinner, better known by their Indian names of Sultan Mirza and Sardar Mirza, and the principal defendant Hercules Skinner are the descendants of a well-known Anglo-Indian soldier of fortune who settled in Northern India. They appear to own considerable landed property in the district of Hissar. The second and third defendants are the members of a joint Hindu family carrying on a money-lending business in the district of Bulandshahar. For the purposes of this judgment the name of Badri Kishen alone will be used as representing their joint business.

In June, 1900, the plaintiffs, with other members of their branch of the family, granted to Badri Kishen a lease of their property for a term of years. On the same date Badri Kishen obtained from Hercules Skinner a lease for a similar period of his property in the Hissar district. At or about the same time the plaintiffs entered into a loan transaction with Badri Kishen, under which he agreed to advance them money to the extent of a lac of rupees on terms which are not material here. This loan transaction was called "their cash and credit account," and evidently represented a running account in Badri Kishen's books.

Badri Kishen appears to have defaulted in the payment of his rent under the two leases. Hercules Skinner pressed him to discharge his liabilities, certainly under his own lease. In February, 1903, the plaintiffs were clearly indebted to Badri Kishen for a large amount on "their cash and credit" account; and on the 17th of that month he wrote to Hercules Skinner a letter in the following terms:—

"DEAR MR. ROBERT HERCULES,

"Compliments. When Sardar Mirza Sabib pays the amount of my cash credit, you should first realise from him the entire amount due to you together with the amount of interest agreed. I shall allow a credit to him for the same.

"(Sd.) BADRI KRISHNA.

"Dated 17th February, 1903."

This letter was evidently shown by Hercules Skinner to the plaintiffs, and they appear to have regarded it as an authorisation on Badri Kishen's part, as certainly it was, for them to pay the money they owed to him to Hercules Skinner in part satisfaction of his liability under the leases he held. It is not disputed that in accordance with this authorisation they paid Rs. 40,000 to Hercules Skinner to the credit of Badri Kishen's account. On the 9th of February, 1904, when this amount was paid, Hercules Skinner gave the following letter to the plaintiffs:—

"Meerut,

"9th February, 1904.

"MY DEAR BHAJ,

"The amount of Rs. 40,000 (forty thousand) you have paid me through the Bank of Upper India, Meerut, to-day on account of the amount due to me from K. Badri Kishen, I write to say that should you be put to any costs or losses in any court for this particular amount, I shall recompense you.

"Yours affectionate Bhai,

"ROBERT."

This sum of Rs. 40,000 reduced *pro tanto* Badri Kishen's liability in respect of Hercules Skinner's lease. The ascertainment of the balance left was referred to the arbitration of a retired Deputy Magistrate, Khan Bahadur Abdul Hamid Khan, who, after giving credit to Badri Kishen for the Rs. 40,000 paid on his behalf by the plaintiffs, and for other sums alleged to have been paid by him, found that a certain sum was still due from him to Hercules Skinner, and made an award to that effect. This award was made on the 25th of October, 1905.

There were three parties arrayed before the arbitrator, viz., Badri Kishen as the first party, the plaintiffs and other members of their branch of the family as second party, and Hercules Skinner as the third party. With regard to the payment of Rs. 40,000 to the credit of Badri Kishen, the arbitrator expresses himself thus:

"The third point at issue also relates to the first and the third parties, and the second party has nothing to do with it. The third party contends that he received Rs. 40,000 from the first party through Sardar Mirza and others. Besides this he received Rs. 20,000 from the first party in different sums. The sum of Rs. 40,000 is not in question."

And again, after finding the balance due to Hercules Skinner, he says :

“ This amount of Rs. 35,000 is besides that amount of Rs. 40,000 which the third party admits to have received through Sardar Mirza on behalf of the first party.”

Badri Kishen thereafter put forward a claim against the plaintiffs on their “ cash and credit account.” In this claim he gave them no credit for the Rs. 40,000 they had paid on his behalf to Hercules Skinner and which had gone to satisfy part of his liability ; they on their side claimed that it should be taken into account. The matter was referred to the arbitration of the same officer, who for some inexplicable reason refused to give them credit for the said sum of Rs. 40,000 and made an award for the full amount claimed by Badri Kishen. The plaintiffs thus have had to pay Rs. 40,000 over again.

They now sue Hercules Skinner on the letter of the 9th of February, 1904, which they contend is a letter of indemnity under sect. 124 of the Indian Contract Act. They made Badri Kishen and his brother parties to the action, but claimed no relief against them.

Hercules Skinner denied liability, and the Subordinate Judge who tried the case in the first instance, dismissed the suit, holding that it was barred by the first award as *res judicata* under sect. 11 of the Civil Procedure Code, and his decree has been affirmed on appeal by the High Court. The present appeal to their Lordships is from the decree of the High Court.

Their Lordships do not agree with the Subordinate Judge that the suit is barred under sect. 11 of the Civil Procedure Code. The question that has now arisen between the plaintiffs and Badri Narain was never before the arbitrator, nor so far as their Lordships can see, was it included in the reference to him. The action, however, seems to have been wholly misconceived. It was based on the letter of indemnity which on the facts stated was clearly discharged. Hercules Skinner had received the money from the plaintiffs on Badri Kishen's account and had paid it into his account. And Badri on his side had obtained credit for that amount. Whatever rights the plaintiffs had in respect of that money were against Badri. But unadvisedly they allowed the matter to go to arbitration and had an award made against them for the whole amount unwarrantably claimed by him. In this suit also they have made no claim against Badri.

Counsel for the plaintiffs applied for leave under sect. 153 of the Civil Procedure Code to amend the plaint, but their Lordships see no reason for granting the prayer at this stage. In their Lordships' opinion the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

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ROBERT SKINNER, ALIAS SARDAR MIRZA,  
AND OTHERS

*v.*

R. H. SKINNER AND OTHERS.

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DELIVERED BY MR. AMEER ALI.

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