Privy Council Appeal No. 103 *of* 1926.

Bhogilal Bhikachand and others - - - - *Appellants*

v.

The Royal Insurance Company, Limited - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

REASONS FOR THE REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH DECEMBER, 1927.

Present at the Hearing:

VISCOUNT HALDANE.
LORD ATKINSON.
LORD BLANESBURGH.
LORD DARLING.
LORD WARRINGTON OF CLYFFE.

[*Delivered by* LORD BLANESBURGH.]

In this suit the appellants seek to recover from the respondents as insurers the sum of Rs. 1.76.000 with interest, the value of a parcel of diamonds alleged to have been lost or stolen in October, 1922, during its insured transit by registered post from Rangoon to the shop at Bassein of the second appellant, to whom the parcel was there addressed. The suit was brought in the High Court of Judicature at Rangoon. It was decreed by May Oung, J. On appeal, Robinson, C.J., and Brown, J., exercising the Appellate Jurisdiction of the Court, recalled the decree of the Trial Judge, and on the 24th June, 1924, dismissed the suit with costs. From this dismissal the plaintiffs now appeal, and they ask that the decree of May Oung, J., in their favour be restored.

The diamonds were insured partly under one policy, partly under another. Both policies, in terms identical, were in the name of the first appellant, but the diamonds were the property in part of the second and in part of the third appellant. The policies are in form policies of marine insurance covering goods transmitted from, *inter alia*, places in Burma to places in Burma "in the ship or vessel called the registered post." They

insure against theft or robbery or loss any parcel of jewels duly declared from the time of the issue of the postal registered receipt until that of the delivery of the parcel to the consignee and his signature to the Post Office. The delivery contemplated by the policies is delivery at the address of the consignee. The policy moneys are to be paid without abatement on the expiration of one month after first proper notice and proof of the loss have been given.

The first appellant is a commission agent at Rangoon. The second and third appellants, nephew and uncle to each other, are jewellers at Bassein, owners of separate businesses there. They are each of them customers of the first appellant. The commercial history of all three is good. At the time of the trial the first appellant had been in business at Rangoon for over 30 years, and for six or seven years he had done his insurances with the respondents. His credit, so the respondents' principal witness stated in evidence, was unlimited. The other two appellants are younger men, but their businesses are said to be amongst the most important of their kind at Bassein. The third appellant holds a public position of some prominence in that town. The appellants were possessed of admirable insurance records. They had for all their years in business been insuring their jewels in transit and never before had any claim for a loss been made by any of them. In the present case all three appellants are alleged to be parties to a fraudulent insurance conspiracy. The charge has been launched by the respondents in circumstances to which reference must later be made. The appellants in facing it are entitled to have this record of theirs remembered.

But the first appellant is entitled to have something more said about him. At the time of the transaction originating at Rangoon and alleged by the respondents to have been a gross fraud upon them, the first appellant was on his way to India. He had left Rangoon a week before and he remained absent from Burma for many months. If there is anything clear in the case it is that he personally had neither lot nor part in the transaction, be it fraudulent or innocent. It is not the least serious of the criticisms to which the judgment of the Appellate Court is open that the learned Judges there include in their insinuation, it is not a finding, of fraud all the three appellants indifferently—a mistake which is not surprising if they had regard to the terms of the respondents' notice of appeal. It was only before the Board that any personal imputation upon the first appellant was disclaimed by counsel for the respondents. This amende, tardy though it be, the first appellant is entitled to have put upon record.

The further facts of the case, as they emerge from the evidence and documents, are simple enough. On the 24th September, 1922, the second and third appellants accompanied by one Mehta, an associate in business of the third appellant, left Bassein for Rangoon. They came primarily to purchase diamonds for their Bassein businesses in anticipation of the up-country demand for these stones, always, it seems, most active during the months of

October and November. Their purchases, or a great part of them, were to be made through the first appellant. His office accordingly became their business headquarters during their stay at Rangoon. It was at the time in charge of his managing clerk, one Pandya.

The second and third appellants did not make immediate payment for the diamonds which they purchased. The sums involved were beyond their cash resources. They either gave hundis to or were debited in account by the sellers for the agreed prices. Much of this indebtedness in respect of the lost jewels at the date of the trial still remained undischarged. In respect of some of it judgments had been recovered against the second and third appellants, and proceedings in bankruptcy threatened.

By Saturday, the 30th September, these appellants had, ready for transmission to Bassein, purchased and other jewels of the value of Rs. 1,60,000. On that morning the jewels were put up in separate packets to mark, *inter alia*, their different ownerships, and at the premises of the first appellant were enclosed in a metal cigarette case, which was then duly sealed in the presence of Pandya, of the second and third appellants, and of Mehta. The general direction seems to have been taken by Pandya. It was he who addressed the case to the third appellant at his shop at Bassein. It was he who suggested and marked upon the case the figure of Rs. 200 as a suitable insurance with the Post Office.

Of this Post Office insurance, which ultimately played so important a part in the case, some explanation is here necessary. There was no obligation imposed by the policies to effect such an insurance in any amount. In the case of inland parcels of jewels, however, it seems to be usual, in Burma, for an assured, even if not so obliged by his policy, to insure them also with the Post Office in some amount usually nominal. Here Rs. 200 was the amount chosen, and Pandya chose it.

So marked and addressed, the parcel was taken to the Rangoon Post Office by Mehta and was there registered by him and, as had been suggested by Pandya, was insured also for Rs. 200. The Post Office receipts were in course despatched to the Rangoon office of the respondents in order that, under the open policies of the first appellant then current, the insurance of the parcel at its full declared value might be duly effected. Saturday being a short day, the risk could not be dealt with by the respondents until the following Monday morning. It was then promptly accepted.

Their Lordships have detailed these facts although this is not the insurance which in this suit is called in question. Upon this first insurance the respondents have received and retained their premium. The risk never became a claim. And they are now content. But this insurance was made at and before the trial a subject of elaborate inquiry at their hand; they desired to show that it was as fraudulent as the insurance immediately in question was being alleged to be, and, naturally, because so far as concerned the packing, posting, registration and insurance of the parcel, the

facts deposed with regard to it were in substance identical with those sworn to in relation to the insurance in suit. It is not surprising, therefore, that the respondents did not accept them. But their attack failed. The facts, as above set forth, remained in the result uncontroverted, and this suggests another observation with reference to this first insurance. The second and third appellants had apparently no doubts as to its regularity, post office insurance and all. They risked their jewels in that confidence, which was not misplaced. The risk, as has been seen, was accepted by the respondents on the morning of the 2nd October without comment, inquiry or hesitation.

In the afternoon the second and third appellants were returning to Bassein. They had collected and had still with them diamonds valued at Rs. 1.76.000, a considerable portion of which had been purchased on the two preceding days. For safety's sake, and both Courts agree that this explanation was adequate, they were desirous that the jewels should go separately from themselves and should be insured with the respondents, as the first packet had been. Accordingly, a parcel containing the jewels was, on that morning, made up at the office of the first appellant exactly as had been the other, by and in the presence of the same persons. This parcel was taken to the Post Office, but this time by the second appellant and Mehta, addressed to the second appellant at his Bassein shop. Like the first, and again at the suggestion of Pandya, the parcel was insured with the Post Office for Rs. 200 and so insured and registered was, the second appellant and Mehta deposed, despatched by them as had been the first. The Post Office receipts were, as before, sent on to the respondents and they at once accepted the risk for the full declared value of Rs. 1.76.000.

In both cases the respondents entered in the endorsements made by themselves on the policies the amount of the Post Office insurance, and not in the second case any more than in the first was objection taken or question raised either as to the amount of that insurance or at all. The parcel so registered and postally insured, now described as postal packet 217, duly reached Bassein on the evening of the 3rd October. It was put in the safe at the Post Office. On the same evening the second and third appellants returned from Rangoon. Early next morning the second appellant sent a messenger to the Post Office to take window-delivery of the registered parcel. He was told that it had already been handed to the postman, one Lala by name, for delivery on his round. An hour or so later, Lala returned to the Post Office and reported to the Postmaster that the parcel had fallen through some broken meshes in his bag and had been lost. No trace of it has since been forthcoming, and its insured value is the claim which the appellants make against the respondents in this suit.

The claim was at once put forward. The first attitude of the respondents towards it was one of reserve. The sum claimed was large. It exceeded in amount any previous single insurance of the

first appellant. The second and third appellants were nearly related. The two insurances, each so considerable and effected in such rapid succession, although exciting no observation when tendered for acceptance, seemed ominous in retrospect after one of them had matured into a claim. The respondents accordingly, as they were well entitled to do, required strict proof of the loss. They demanded full particulars of the jewels contained in the insured parcel, indeed in both of the insured parcels. They pressed for information as to the place where and the persons in whose presence each of them had been packed. Noticing that the sum of Rs. 200 was less than the amount for which the first appellant had been accustomed to insure with the Post Office previous parcels of less value, they were insistent to know the reason why that smaller sum had been chosen in these instances. The particulars and information asked for were promptly, and, as has been found by the Trial Judge, accurately supplied. As to the Post Office Insurance for Rs. 200, the answer of the solicitors in a letter of the 23rd November, 1922, was that there was no special reason for insuring the parcel for that sum, instead of a larger amount, except a spirit of economy, and that it did not matter for what amount the parcel was insured in the Post Office as the assured were not looking to the Post Office to recoup their loss. The solicitors also pointed out, what was of course true, that the respondents had without objection endorsed the policies, well knowing in both cases that the parcels were covered by a postal insurance of only Rs. 200. To these statements no reply has ever been made, and to the letter itself the only response was to the effect that the claim papers were being forwarded to the respondents' Calcutta office for instructions, and that a further letter would be sent on receipt of the reply.

In the meantime the Post Office had called in the police to inquire into the loss of the parcel, and into the conduct of the postmaster and of the postman Lala in reference thereto. There were suspicious circumstances in relation to the condition of the postman's bag, and other matters. As a result, on the 15th February, the appellants were informed by the police that the case had been closed as undetected, and that guilt could not be brought home to Lala. The Post Office accordingly paid to the appellants their insurance of Rs. 200, and it may here be added that the postmaster was soon after promoted, while Lala at the time of the trial still remained in the postal service.

Of all this the respondents duly became aware, but they maintained their refusal to pay, adducing one reason after another in justification. The claim had been referred to the head office for final instructions. The police investigation into the alleged loss was not complete, and therefore the matter could not be disposed of then. This was on the 20th February. When informed on the 10th March by the appellants' solicitors that the police investigation had been closed, and that the Post Office had paid their insurance, the respondents' only reply was that the case was

still under investigation by the Criminal Investigation Department, and that the Rangoon office was not yet in a position to make a disposal of the claim. That office having, apparently, in the meantime, made an unsuccessful attempt to induce the appellants to accept a smaller sum in satisfaction, this suit was, on the 12th April, 1923, commenced, and therein on the 11th June, more than eight months after the loss, the respondents, for the first time, charged the appellants with fraud. This they did in the following paragraph of their written statement :—

> " The defendants allege that the parcel in question in the alternative either never contained diamonds of the value of Rs. 1.76.000, or that the said diamonds and parcel was abstracted from the custody of the postal authorities with the knowledge and connivance of the plaintiffs, who have conspired to put forward a fraudulent claim in this matter."

The appellants complain, and with reason, that this most serious charge should have been so belated, and when made should be so vague. The first appellant, an old customer of the respondents, has a special complaint of his own, that without the slightest justification the charge should have been made to extend to himself, and is only now withdrawn. The explanation of the respondents' attitude in the matter is, as it happens, disclosed in a letter of the 10th February, 1923, addressed by their office at Calcutta to their Secretary at Rangoon :—

> " I am obliged for your letter of the 5th instant, and note that, as the Criminal Investigation Department have so far failed to establish a case against the parties, the case has been filed as being " Undetected," but I assume that this does not mean that the Criminal Investigation Department intend to let the matter drop. I trust the former Bassein Post Master, who you advised us on the 17th October last had been transferred to Rangoon, will be closely watched, and that the Police will make every endeavour to identify the writer of the last anonymous letter which we recently sent you, and that they will continue to take an active interest in the case.
>
> " I note the Post Office contemplate meeting the claim on them this week, but, whether they do so or not, I do not consider that we should yet make payment.
>
> " The circumstances strongly point to attempted fraud, and, if further pressed, I think we should state that, in view of information which has reached us, we are not prepared to pay the claim. The less we say at this juncture the better, and I would not suggest indicating in any way what the nature of the information in our possession is. I must admit our information is very meagre, but the claimants need not know this. I doubt if a suit will be filed, but, if it is, fresh publicity will be given to the matter, which might lead to useful information being produced. While I am naturally very averse to delay in payment of claims, the circumstances in this case seem to warrant every means being taken to defer payment. Should a suit be filed, it will probably be several months before it is heard, and, in the meantime, incriminating evidence may be forthcoming, or we might be approached with a view to effecting a compromise."

The meagre information of February had not been supplemented in June. The only evidence of fraud forthcoming even at the trial had been collected by one, Bhattacharjee, to whom reference will later be made, long after the date of the written statement. The respondents accordingly remain under the imputation that

when, so long after the event, they did put forward this charge of fraud, they had even then in their possession no evidence at all to support it. It was, in truth, a dilatory plea, not justified by their obligation under their policies to make prompt payment. The correspondence shows that this dubious procedure was not directed from London. The view of the respondents' head office, as early as the 10th January, had been that the claim should be met, provided that the police had finished their investigation, that no further information had been obtained, and that the Post Office had paid their insurance. That view was not, however, accepted at Calcutta, and this suit will not have been without some good effect if, as a result, the respondents see to it that similar wholesome instructions when given to their representatives in the East are in future observed.

The contest at the trial centred on the allegations in the respondents' written statement, and the issue of this appeal has depended upon the question whether either of their allegations in that statement is true. The first of them—that the parcel never contained diamonds of the stated value—put the appellants to proof of the fact that it did: the burden of the alternative allegation of fraudulent conspiracy remained heavily with the respondents.

Upon the first allegation the respondents' case really was, that there never had been any parcel containing diamonds made up anywhere. This was apparently the statement of the anonymous letters referred to by the Calcutta office in the above letter of the 10th February, 1923. It was accordingly not suggested to the witnesses that the postal packet 217 was other than the parcel packed at the office of the first appellant. What the respondents did try to prove was that in that parcel there never had been any diamonds at all—if for no other reason than this, that the appellants had not the diamonds to put into it. This was the contest, and in the course of it, evidence of the utmost particularity was adduced by the appellants and tested at every point by the respondents. The merchants from whom the jewels had been bought produced their account books: the persons present when the parcel was made up explained in detail what then happened.

In the result the learned Judge in his judgment expressed himself very clearly. On the first point he thus stated his conclusions:—

"That the plaintiffs on or about the 2nd October, 1922, were in possession of diamonds of the description and value alleged by them is amply proved. They have called witnesses who made the sales, and their account books have been put in the translation of these account book entries and connected exhibits have taken much time, and I have spent many hours in checking the witnesses' statements."

As to the packing of the parcel the learned Judge also held that the account of it as above stated should be accepted. And all this was the view of the Appellate Court as well. There the appellants' possession of diamonds was no longer even contested by the respondents, and as to the making up of the parcel the learned

Judges say, " We see no reason to doubt that a parcel was made up containing them."

On these findings it might have been supposed that, subject to the result of the alternative issue of fraudulent conspiracy, the respondents' case was at an end. Registration, posting and insurance of the parcel so made up had been duly deposed to, and the evidence on the point had not been challenged either in cross-examination or by counter evidence.

But this was not to be, for in his address to the Judge on the whole case counsel for the respondents essayed the contention that it had not been satisfactorily proved that the postal packet 217 was the same packet as that made up at the premises of the first appellant; that there was only the evidence of the second appellant and of Mehta that it was the same; that, for reasons to be alluded to later, Mehta's evidence must be ignored; and that the evidence of the second appellant, interested and uncorroborated as it was, should not be accepted as sufficient on so serious an issue.

Now, in their Lordships' view, this contention ought not, at the stage of the trial at which it was made, to have been entertained at all. The evidence with regard to the posting of the parcel had passed quite unchallenged; the respondents' sole case had been that there was only one packet and that it never contained diamonds; there was not a tittle of evidence to support the suggestion, made as a last resort, that there had been two. The learned Judge, however, did not take this strict view. He did not reject the contention as then inadmissible; he dealt with it on its merits. He found that the evidence of the second appellant with regard to the posting could not be rejected, and being of opinion that the respondents' alternative case of fraud had not been made good, he decreed the suit.

In the Appellate Court this last contention of the respondents was put by them in the forefront of their case, and the treatment of it by the learned Judges there was somewhat unusual. Agreeing so far with the learned Trial Judge, they would not and did not hold judicially that fraud on the part of the appellants had been proved, but they intimated very clearly their belief that all three of them were implicated in something of the kind. They made no discrimination between the appellants on this head. They criticised the Trial Judge for adjudicating upon this last contention of the respondents without taking the appellants' unproved fraud into account. Allowing themselves to be duly influenced thereby, and taking the view also that the second appellant on another relevant matter was a perjured witness, they refused to accept his evidence as to the posting, although it had been unchallenged, and they dismissed the suit with costs. This is the situation with which the Board have had on this appeal to deal.

Now, it was upon the view they took of the Post Office insurances that the decision of the learned Appellate Judges in its last analysis depended; and, indeed, these insurances have been invested by both Courts in Burma with a degree of decisive

importance to which on the evidence their Lordships cannot help thinking they are in no way entitled. So much will, they believe, appear when their true purpose and proper implications have been ascertained, and that, in the first instance at all events, apart from any question of fraud. To this task, therefore, their Lordships at once address themselves.

In the present case the assured, as has already been pointed out, were not required by their policies to effect any Post Office insurances at all. It was enough that the jewels to be protected were being carried "in the ship or vessel called the registered post." Nor apparently were the respondents' policies singular in this respect. The jewel insurances of the second and third appellants had usually been effected with the Norwich Union office, and specimens of that company's policies issued to them are in evidence. It thereby appears that the Norwich Union, presumably by way of protection against the temptation presented by over-insurance, required a declaration from its assured that his Post Office insurance did not exceed Rs. 50. In other words, under Norwich Union policies there was not only no obligation on the part of the assured to insure with the Post Office: there was an express limitation on his liberty so to do.

The practice among assured already referred to must, of course, be well known to the offices. They know that it is usual for an assured not only to register his jewels with the Post Office, as he is always bound to do, but also to insure them in some nominal amount with the Post Office whether so bound or not, and the practice seems to be rational enough. An honest assured prefers his jewels to their insurable value, and Post Office insurance is not unlikely to provide additional security in the transit of a parcel of jewels if in amount it be at once large enough to impress upon the officials handling it the propriety of taking special care of the parcel, but be not so large as to be likely to excite their cupidity or weaken their integrity. And if such be their purpose one would expect that the amounts of these insurances will be governed by no exact principles, but will depend upon the character or mood, or even caprice, of the individual assured when fixing them.

And this is just what all the witnesses, who deal with the subject in evidence, affirm. Pandya, who fixed the insurances here, is very clear on the point; and he is supported by appellants' witnesses numbered 2, 4 and 5, the first two, diamond merchants and the third, a jeweller at Rangoon, and by their witness numbered 8—a Rangoon dealer in precious stones in a large way of business. Pandya's statement is rejected by the learned Appellate Judges almost with derision. It may be doubted whether they could thus lightly have dismissed it had they considered it on its merits, had they reflected that it was so influentially confirmed in other quarters, and had they noted the failure on the part of the respondents to meet it by any evidence to the contrary, either of their own officials or from the trade.

In the result it appears to their Lordships that, apart from the Post Office regulation, so much discussed in Burma, and to which attention must now be directed, the insurance of the two parcels here for Rs. 200 each was most ordinary and natural. How far, then, is that conclusion affected by the existence of the regulation referred to ?

This regulation in effect is that at the local Post Offices throughout India and Burma, but only at these offices (for the regulation does not apply to large towns, as, for example, Calcutta or Rangoon), parcels insured for Rs. 250 or over are given window-delivery only ; they must be called for by or on behalf of the recipient ; they are not delivered in the ordinary way to him at his place of address.

Now, with reference to that regulation, it must first be observed that it seems clearly to be one for the limitation of the Post Office's liability as insurers : it is not a regulation designed, as the learned Appellate Judges apparently thought, for the greater safety of the insured parcels, so that an assured who ignored it was, almost thereby confessedly, exposing his jewels to hazard. On the contrary, it would not seem to be natural that an insured person whose jewels were, as here, protected under his policy until delivered at his place of address, should effect when under no obligation to do so a Post Office insurance which would leave them at his charge between the Post Office and his place of business.

But the most striking thing in connection with this regulation is that to so many of the witnesses its existence was either unknown or discounted. This was the position of Pandya and at least three of the appellants' witnesses, all of them apparently quite independent. In this position, too, must have been the respondents themselves, for they attempted no explanation of how it was that the appellants' two parcels, each addressed to Bassein and each insured for Rs. 200, so that window-delivery was thereby excluded, were accepted without demur or delay. Their Lordships cannot doubt that the reason of all this was that the regulation was only locally operative—not operative, for example, in Rangoon, the centre of the Burmese jewel trade, and that the Insurance Companies, if they knew of it, attached to it, as was specially shown by the form of Norwich Union policies, no importance or value at all. The important fact that the regulation is not universally applicable was clearly not present to the minds of the learned Appellate Judges in considering its significance, for in the elaborate analysis of the previous insurances effected by the first appellant with the respondent, which they made in order to support their view that in the case of valuable parcels, insurances in excess of Rs. 300 had always been effected by him with the Post Office, they treat this excess as being equally pertinent in cases where the place of destination had been Calcutta or Rangoon, where the regulation does not apply, as in cases where the destination had been Bassein or some other place,

where it is operative. Incidentally, also, they omit to observe that there is no instance of an insurance at Rs. 250 : the insurance invariably is for some sum above or below that figure—a strange circumstance if the determining factor in fixing the amount was window-delivery or not. On this whole matter their Lordships come to the conclusion that this regulation in no way militates against their view reached apart from it, that the postal insurances here were not abnormal, and that the statement of Pandya that he fixed them without reference to window-delivery and, indeed, in ignorance of the regulation, is evidence that may quite reasonably be accepted as true. This insurance in no way indicates a fraud or a step in a fraud in the sense that to any extent the respondents are relieved of their burden to prove that fraud.

This view of the matter deprives of much of its importance the final and determining factor in the conclusion reached by the Appellate Court. In the judgment of the Court, it is said :—

" There can be no doubt that the plaintiffs were fully aware of the rules as to window-delivery, and we are not prepared to believe them when they say that the amount for which the parcel would be insured with the Post Office was entirely a matter of chance, the amount being fixed on the spur of the moment without any reference to window-delivery or anything else."

The learned Judges, it will be seen, attribute that statement to, amongst others, the second appellant, and it was because they held him to be a witness of falsehood in that respect that they considered themselves entitled to reject, when uncorroborated, his evidence as to the posting of postal packet 217.

Now, for reasons already given, that statement imputed to the second appellant would not, had he made it, have seemed to their Lordships to be necessarily false. But the tragedy is that he made no such statement. His own insurances being with the Norwich Union, his postal insurances were usually Rs. 50, and so he said. He said nothing at all to the effect above imputed to the appellants generally, while as to the regulation, his evidence was that he was quite aware of its existence. It was the third appellant and not he who said he was ignorant of it. In other words, the conclusion of the learned Judges is based on a most regrettable mistake, and it follows that the only ground upon which they upheld what their Lordships have called the respondents' last contention cannot be sustained, and that the finding of the learned Trial Judge on this point must remain undisturbed. In the result postal packet 217 was the selfsame packet of diamonds which had been made up in the office of the first appellant and handed to the second appellant to be posted.

And this same conclusion, perhaps not less certainly, may be reached in another way. The learned Appellate Judges, it will be remembered, found that the diamonds had been packed at the first appellant's premises, as deposed to by the witnesses present. It was their opinion also that if a dummy parcel was in fact posted, as they strongly suspected, each and all of these witnesses

were privy to the imposture. The learned Judges, however, did not apparently pause to consider what possible purpose had been served by the making up of the parcel which they found had taken place, but which, on this further view, had been only an idle ceremony. Had they asked themselves that question, the answer to it, as their Lordships think, would not have been difficult. Once find, as both Courts did, that the parcel of diamonds was made up and handed for post to the second appellant, then the subsequent fraud can only be made even plausible by imputing it exclusively as a private and particular fraud to the second appellant and Mehta—as a fraud not only on the respondents, but on the first and third appellants as well. But a fraud confined to the second appellant and Mehta has never been even alleged by the respondents, and that presumably for a very sound reason. Had they made that charge, and had they failed to establish it, they would have been left in the unfortunate position of having, at all events temporarily, affirmed the honesty of Pandya, who was alone responsible for the fixing of the Post Office insurance. In other words, they would have deprived themselves of their main plank, unstable as it was, on which their charge of conspiracy rested. The result is that, so soon as the making up of the parcel is accepted, as it has been by both Courts, fraud in the posting can only be brought home by a limitation being imported into the charge, which has never been made.

The respondents did not ask at their Lordships' hand for a finding that their charge of fraudulent conspiracy had been made good. Their Lordships are accordingly dispensed from the task of dealing with this matter in detail.

But they have considered all the evidence with care, and certain aspects of the case not unfavourable to the appellants, but not alluded to in the judgments below, have been included in the statement of the facts which they have already made. And there are others. On the whole matter, their Lordships feel it to be due to the second and third appellants to say—the first appellant is now absolved by the admission of the respondents themselves—that in their judgment the evidence actually led against them cannot be accepted as going any way at all towards proving the charge it was adduced to support. It is a matter of some surprise to their Lordships, who have considered it critically, that that evidence, as evidence against any of the appellants, and much less as evidence against all of them, should, when its nature and inspiration are remembered, have been so seriously regarded by the learned Appellate Judges.

In these circumstances the conclusion just announced is sufficient to dispose of the appeal, and their Lordships would have left its consideration there had it not been that two matters, exhaustively dealt with in the Courts below, raise questions of general importance. Their Lordships feel it to be their duty, therefore, to refer to them.

The first is the rejection from consideration by both Courts of the evidence given in the suit by Mehta. Mehta, in the box, had confirmed generally the evidence given by the second and third appellants and by Pandya as to the purchase and making up and despatch of the diamonds. By the Trial Judge the evidence of these witnesses was, on these matters accepted in its entirety ; by the Appellate Court it was accepted except as to the evidence of posting given by the second appellant. Mehta's evidence, however, was rejected altogether, and that because of the finding of both Courts that he had offered the respondents' representatives in Burma to give evidence in their favour if he was paid by them the sum of Rs. 50,000.

It all arose in this way. One Bhattacharjee, an officer who had taken some part in the police investigation into the loss of the jewels, remained, while still attached to the police, actively interested in the preparation of the respondents' case. He sat by their counsel at the trial instructing him. Witnesses called by them—more especially the two chief witnesses in support of the case of fraudulent conspiracy, had been brought forward as a result of his activities. To the police, Mehta at an early stage had made his statement : that statement was in the possession of the respondents. It may be assumed that it was in accord with the evidence he gave at the trial, because he was in no way confronted with it as being in any way in conflict with his evidence as then given. After having made that statement, Mehta, it seems, suffered a robbery at his own house, and so again came into association with Bhattacharjee, who, it would appear, obtained a promise from Mehta that, notwithstanding his previous statement, he would for Rs. 50,000 make a full confession and a statement before a magistrate to the effect that the respondents' charge of fraud was true. Bhattacharjee, delighted with his success, although doubtful whether Mehta was not something of a humorist out to play a trick upon him, expressed to his chief at Rangoon his fear that the respondents would not be prepared to pay so large a sum as Rs. 50,000 on so doubtful a chance. He arranged, however, to bring Mehta to Rangoon in secret, unknown particularly to the second and third appellants, and there to put him in direct contact with the respondents' representatives. He first took him to their legal adviser. To that gentleman Mehta apparently repeated his proposal. But unsuccessfully. He rightly felt that such a suggestion was one which professionally he could not entertain, and Mehta was handed over to the respondents' manager at Rangoon. To him he made the same statement, and apparently—for that is the effect of the manager's evidence—his offer was rejected, not because it would have been discreditable or dishonourable to enter into any such corrupt bargain, but really because there was no certainty as to what the purchased evidence would be, while the price asked for it was exorbitant. Had Mehta been willing to accept the reward of Rs. 10,000 previously offered by the respondents for information

as to the diamonds, the bargain, so the witness leaves it to be inferred, would have been struck. To Mehta, when he was called, these matters were put in cross-examination. He denied them all. It was put to him also that in connection with the preliminary police inquiry he had attempted to bribe the butler of the District Magistrate. It was suggested to him further that, in conversation with one Lalu Misser, he had stated that the whole case of the appellants was a swindle. When the case for the respondents was reached, they sought to contradict all these denials of Mehta by substantive evidence, adduced under section 155 (3) of the Evidence Act. The learned Judge permitted them so to do by calling Bhattacharjee, the respondents' manager at Rangoon, the District Magistrate's butler, and Lalu Misser. The last denied that Mehta had ever made any such statement to him ; the others supported the stories which Mehta had denied. The learned Judge found that in these last denials Mehta had lied, and he accordingly refused to consider his evidence at all. Upon this two questions arise for discussion. The first is whether the evidence in rebuttal was properly admitted. Their Lordships are not prepared to hold that the evidence of Bhattacharjee and the respondents' manager on this issue was not properly received, but they think the section was stretched beyond its true purport in admitting the evidence of the butler and Lalu Misser. Sections 153 and 155 of the Indian Evidence Act must, in their Lordships' judgment, be strictly construed and narrowly interpreted if the Courts governed by that statute are to be spared the task in many suits of prosecuting, on most imperfect material, issues, which have no bearing upon that really in contest between the parties. Section 153 does not go far beyond, if it goes at all, beyond, the case of *A. G.* v. *Hitchcock* (1 Ex. 91), on which doubtless it was based.

So much for the legal aspect of this incident. Mehta was duly and rightly discredited, even although it may well be that the whole adventure on his part was, as Bhattacharjee feared it might be, no more than a grim joke—a trap into which he hoped the respondents might fall. But what surprises their Lordships is that while Mehta is duly denounced, they find no word of judicial criticism of the part in the transaction played by Bhattacharjee, to say nothing of the respondents' manager. In their Lordships' view, that played by Bhattacharjee was little less blameworthy than Mehta. If there were no persons ready to offer bribes for evidence favourable to their cause, there would be no bribed witnesses in Burmese or Indian Courts ; the bribers stand to the bribed in these cases in a relation not unlike that in which the receivers of stolen goods stand to the thief. And when communications similar to those deposed to in this case are brought to the notice of the Court, they call for and should receive instant judicial condemnation. The respondents' legal representative did well to take no personal part in such a negotiation ; but he ought himself instantly to have turned it down and advised his clients

to have nothing to do with Mehta. Any negotiation on such a matter was as blameworthy in the lay client as it would have been derogatory to the professional man. In the view of their Lordships such an incident as is here disclosed must always, when brought under judicial notice, be instantly and sternly reprobated whether the King's justice is being administered in the East or in the West.

The second matter on which their Lordships feel it desirable to observe is the tendering and reception in evidence of the letter written by Bhattacharjee to his official chief on the 30th June, 1923. This letter was tendered and received under Section 157 of the Evidence Act. Their Lordships desire emphatically to say that the letter was not, under that section, properly receivable for any purpose. It was of no greater value as evidence, although it was calculated to do much more injury to impartiality than an anonymous letter. It is idle to suggest that the letter was tendered to fix a date, and to its malign influence may well be largely attributable the statement of the learned Trial Judge in his judgment. " For some reason that I am unable to explain I feel that there is more in the case than meets the eye " ; as well as the strong view against the appellants taken by the learned Appellate Judges. Its contents ought to have been excluded from judicial consideration in all Courts as completely as they have been ignored by their Lordships.

Their Lordships do not pretend that they have solved the mystery of these lost jewels. It is not their task, any more than it was the task of the Burmese Courts so to do. The judicial duty throughout has been to ascertain by evidence that the Court can receive whether the appellants have proved their case or whether the respondents have proved their defence. In their Lordships' judgment, so soon as the appellants had established, as they did, the making up and the posting of the parcel, the suit became practically undefended, and in the result it should have been so dealt with.

These are the reasons for their Lordships' humble advice to His Majesty that this appeal should be allowed, and the decree of the learned Trial Judge restored, with costs, both before the Board and in the Appellate Court.

In the Privy Council.

BHOGILAL BHIKACHAND AND OTHERS

v.

THE ROYAL INSURANCE COMPANY, LIMITED.

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