

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mulka Mukhdra, Begum of the ex-King of Oude, v. Tekaeth Roy, from the High Court of Judicature at Calcutta; delivered the 21st July, 1870.*

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Present :

LORD CAIRNS.

SIR JAMES W. COLVILE.

SIR JOSEPH NAPIER.

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SIR LAWRENCE PEEL.

UPON the hearing of this Appeal on the 8th July, their Lordships intimated that they would report to Her Majesty in favour of the Appeal. They now proceed to state the reasons of their Judgment.

This is an *ex parte* Appeal brought by the Begum of the ex-King of Oude from a decision of the High Court at Calcutta, which reversed in part a Decree of the Principal Sudder Ameen of the 24 Pergunnahs, in favour of the Appellant, by disallowing a large item of her demand, amounting to nearly one lac of rupees. The Defendant was her cashier.

The Plaintiff stated in her plaint that the Defendant had been for a long time employed under her as a servant in the capacity of her cashier, in consequence of which about 100,000 rupees were due to her, "as per Schedule given below."

The Schedule referred to is headed "Detail of the Account." It mentions a sum of 145,204 rupees 3 annas 2 pice as an amount in deposit with the Defendant, as per account dated the 26th Rujjub, 1271, Hijree, given by the Defendant. The Plaintiff states the amount claimed on a conjectural estimate as one lac of rupees, and asks for the adjustment of the account. The Judge, on an objection made that the documents were not stamped, rightly declared the claim to be for a sum on an unadjusted account.

The Plaintiff filed with her Plaint two furds or

memoranda, one of which is described as A. In the commencement of her first examination in Court, the Plaintiff stated that the other memorandum had been filed by mistake; it was accordingly withdrawn by her, and is treated in the Judgment under Appeal as so withdrawn, and as immaterial. The introduction and withdrawal of this latter paper are, however, so far important, as showing that some mistake had occurred, and that the Vakeels had in fact not fully understood the case at that early stage. The document A mentions the same sum, 145,202 rupees 3 annas 6 pice, which is stated in the detached statement annexed to the Plaint; but no possible explanation of the contents of A, without the introduction of other items of charge or discharge, can reconcile it with the Plaintiff's statement, that she is entitled to recover a lac of rupees.

The Defendant in the third head of his statement, at p. 3 of the Record, remarks on and excepts to the confusion and uncertainty of this paper A. In no part of the proceedings did the Plaintiff abandon or qualify her statement that she was entitled to recover a lac of rupees. This state, then, of the proceedings at this stage of the cause certainly shows the necessity of some explanation of the proceedings on the part of the Plaintiff, which indeed the exception of the Defendant was calculated to elicit. The explanation was given by the Plaintiff herself on her examination in support of her case. It is to be found in a statement of the Court itself set forth in the body of her examination at p. 5 of the Record, line 30.

At this time the furd or memorandum C was first introduced by the Plaintiff, who proved it to be in the handwriting of the Defendant, as he subsequently admitted it to be, and to refer to the years 1267-1268 and 1269, the years immediately preceding that to the balance of which the paper (A) related. The Judge received the document and permitted it to be filed. Viewed in its proper light, it was rather evidence to support the originally stated cause of action than an amendment of a claim or a substitution of one claim or cause of action for another. If it were inconsistent with any other evidence in the cause, or with the statements in the Plaint, the due consideration of those difficulties or objec-

tions, as well as its claims to belief, would have to be considered by the Court when it proceeded to deal with the proofs of the issues of fact.

The claim as originally prepared was for what might prove to be due on adjustment of an account continuous in its nature, as connected with continuous receipts and disbursements in the Plaintiff's service. The Plaintiff, whilst her examination was being proceeded with, having produced in support of her claim the document C, which showed the Defendant accountable to her and charged with certain sums by his own admission derivable from this document, it is difficult to conceive how the Court could have rejected it in that or any other stage of the cause, or have refused to give due weight to it as evidence on the trial of the issues of fact. Had it been open to any just exception as an amendment of the *Plaint*, this should have been proposed to the Judge who allowed it to be filed; and if in any way inadmissible as evidence, this should have been urged on the hearing of the issues, if not at an earlier stage. Its general value was taken into account by the Court below in considering the whole of the evidence.

Their Lordships cannot find in the proceedings before them any ground for such special exception or objection. The Defendant admitted the document to be in his handwriting. The issues were framed so as to include the ascertainment of the balances for the years which this document covered. No objection was made to this framing of the issues. The Defendant went into evidence to discharge himself from the items of charge which the balance evidenced by this document C, constituted.

His case on this point was, that the balance which C showed, had been subsequently liquidated, and had not entered into A. It lay upon him to substantiate his discharge. On the whole account he claimed to be a creditor of the Plaintiff to the amount of about 8,000 rupees. It was common ground that the balance of C did not enter into A.

The Plaintiff and the Defendant were both examined, cross-examined, and re-examined. Her evidence, if trustworthy, established her case. The case turned on a conflict of evidence. Several witnesses for the Defendant were examined, some under Commission, others before the Court itself.



Each litigant had full opportunity of presenting her (or his) whole case to the Judge, and of answering and commenting upon the case opposed to it. The matter was substantially one of account, the decision one upon evidence. The Defendant was necessarily well acquainted with the sources and extent of the Plaintiff's income; he must be presumed to have been well acquainted with her ordinary expenditure, and any special deviations from it would not be likely to have escaped his notice, or to have been unknown to him. Her case, as originally framed, was either mistaken in point of statement or details, or false, as the Defendant represented it. No Court could properly decide such a case without a full examination of the whole evidence on both sides. The Plaintiff's suit, if false, must have been false to her knowledge.

The Principal Sudder Ameen made a careful and exact abstract of the whole case, and of the statements on each side; he then carefully examined the whole evidence: he commented on the conduct of the parties and the probabilities which the case afforded of the truth of the claim.

The Defendant had objected that the Plaintiff's demand belonged to a foreign forum—that of Oude; the Judge described the claim as a continuous claim, existing after the extinction of the Kingdom of Oude, and the subject of the jurisdiction of his own Court, for the reasons which he assigns in support of that jurisdiction. The very objection treats the demand as extending over a considerable time, and makes no distinction between the years covered by C, and the subsequent time. On the merits of the case, he remarks on the Defendant's conduct as evasive and inconsistent; he considers the credit due to the witnesses, and adjudges the case against the Defendant for the full balance claimed.

Amongst the grounds of this decision are the following:—That the document C was in the Defendant's handwriting, and constituted certain items of charge against him; that the document A also constituted items of charge and discharge; and that there was no reasonable evidence that either document was imperfect, or superseded by any subsequent account; that the defendant stated himself to be a creditor of the Plaintiff on the whole account; and that his written letter E was inconsistent with that statement; that he declared certain vouchers to be in

his possession, and said that he would produce them, but failed to do so, and did not account for this omission; that he had gone into evidence to prove that the balance shown by the document C was covered by subsequent payments on account of the Plaintiff by Defendant, but that the evidence was unsatisfactory to the Court on several grounds which are fully and particularly detailed in the Judgment. The largest of these items in discharge of the balance shown by C, viz., 50,000 rupees given to the Begum Amanee, the Defendant admits must have been directed by a written order of the Plaintiff, whilst one of the witnesses professes to know that an oral order was given. The Begum Amanee herself is not examined as to this, and nothing is urged to explain this omission, the order is not produced, and it is not shown that the payment of so large a sum was not proveable by better evidence than that produced, of the value of which the Amanee must have been a competent judge. The Begum's receipt also was not produced. The Court added that the item as to the gold utensils was advanced for the first time at a late stage of his examination, and was supported by very meagre evidence. The witnesses whom the Defendant adduced, the Judge described as mean persons, and on examining the evidence, most of these witnesses it will be seen give no dates, and the absence of dates to the transactions to which they depose fails to point sufficiently the items of discharge to the times and items of charge. The mere statement of an accounting party that his vouchers are destroyed was not readily to be credited. The conclusions, therefore, of fact of the Principal Sudder Amanee seem to their Lordships to be fully sustained by the evidence.

The Judgment of the High Court has failed to alter this opinion.

The question for decision in the High Court was one of fact. The judges state that the question principally urged before them was the inconsistency of the Plaintiff's then present case with that first set up by her. In support of this objection on Appeal, the discrepancy between the documents A and C seems to have been pressed on the attention of the High Court. If the case could be viewed as one limited to what these documents alone disclose on a comparison between them, if the memorandum C were



as the High Court describe it, a loose memorandum, if the acts of the Plaintiff in producing C were fit to be viewed as a substitution of a new case, as an afterthought, and not as a production of evidence always in her favour, in support of her case as she meant to prefer it, then the conclusion of the High Court respecting that part of the finding which disallowed the balance established by document C would be one the correctness of which could not be impeached. In coming to its conclusion, the High Court seems to have based its decision on a distrust engendered by the inconsistency between the first and the amended statements of the Plaintiff, that is to say, on a part only of the whole evidence.

The High Court thought it highly improbable that a lady of her rank, a person competent herself to the transaction of business, and having competent persons in her service, should in an honest case make so erroneous a statement of her case, as that which it presented according to her evidence. But the Court failed to remember that this lady was a *purdah nishin*, that she and her immediate servants were new to Bengal and its Courts, that between a *purdah nishin* lady and her *vakeels* there is intermediate agency, and that mistakes may thence arise, and that one mistake had certainly occurred. It might further be urged that the hypothesis that her case was a false one, and her use of C an afterthought, involved much more serious blundering in support of a false case, usually not preferred without previous concert and deliberation; for as the document itself was genuine, and showed a balance in her favour, and was throughout her mainstay, that rather than A was likely to have been put forth.

The Defendant answered to C, as to a correct document charging him in the usual course of dealing, but insisting that it was discharged. The High Court did not review the finding of the Court below on this part of the evidence of discharge, or declare any opinion of its own, that the items of discharge were established. The mere omission of an accountable party framing his own account, to carry forward into a new account a balance against himself existing in a former one, could constitute no evidence in his own favour. To prove the extinction of the balance, such omission might be considered in conjunction with other evidence in the cause.

1neir Lordships cannot support the reversal of the finding of the Court below on the presumption which the High Court acted on in this case and treated as fatal to the Plaintiff's recovery, viz., that founded on the inconsistency between the original and the subsequent statement of the case. Unless the Defendant's case of discharge be true, the imputations on that of the Plaintiff fail. The Court of First Instance thought that case of discharge untrue; and the Court which reversed its Judgment has left its remarks unanswered, and its conclusions unrefuted. It has reversed, on suspicion, founded on only a part of the case, without a review of the whole evidence, a Judgment carefully prepared on a searching examination of that evidence, and apparently supported by it. Their Lordships therefore, think that the original Judgment should be restored, that the Judgment of the High Court should be reversed, with costs, including those of her Appeal; and they will humbly advise Her Majesty accordingly.

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