Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Kishen and others v. *the Secretary of State for India in Council, and Cross Appeal from the Court of the Judicial Commissioner of Oudh ; delivered June* 18*th*, 1885.

Present :

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE basis of this suit is an agreement which was entered into on the 11th June 1869 between Mohan Lal and the Government of India —the Secretary of State in Council represents the Government—on the occasion of Mohan Lal being appointed Saddar Treasurer in the district of Lucknow. The material words on which the claim is founded are these :—"Should "any loss or deficiency arise from non-production "of accounts, or by misconduct, or negligence of "myself, of my temporary substitute, or of agents "appointed by me, or on my nomination." Then :—"I hold myself responsible to make good such loss." What has happened is this. There have been extensive forgeries of stamps by subordinate officers of the Treasury of Lucknow. Against Mohan Lal himself there is no charge ; he is perfectly innocent. But it is sought to make him liable by reason of the misconduct of his subordinates, and particularly of Hinga Lal, who was first the Accountant, and then the Darogah of Stamps in the Treasury of Lucknow. The course of proceeding by those who committed the forgeries seems to have been as follows.

A 17974. 125.—7/85. Wt. 2708. E. & S.

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21

Hinga Lal received out of the Treasury stamps for sale, according as he indented upon the Treasury for them. He did not sell them himself, or ought not to have sold them himself, direct to the purchasers, but distributed them to certain persons who were licensed vendors of stamps, who dealt directly with the public, received the money from the public, and whose duty it was to pay that money over to the Treasury. In some cases it appears that the purchasers paid direct to the Treasury, but either from the purchasers or from the vendors the Treasury ought to get the whole value of the stamps issued by it to Hinga Lal. It seems that there were daily accounts stated between the Treasury and the vendors, but between the Treasury and Hinga Lal the accounts were stated monthly, and of course at the end of every month it was necessary to show that the money received by the Treasury was the exact value of the stamps which had been issued, excepting such as were not then sold and were accounted for as not sold. Hinga Lal colluded with the licensed vendors. They caused stamps to be forged either by making entirely new ones, or by altering some genuine stamps to larger amounts. The vendors sold those forged stamps, and they paid the whole of the proceeds into the Treasury. Then Hinga Lal, having got real stamps from the Treasury, took for himself and his accomplices so many as were exactly equivalent to the payments made into the Treasury. He accounted every month, so adjusting his accounts as to make the proceeds paid into the Treasury for the forged stamps by the licensed vendors exactly square with the value of the stamps issued by the Treasury to him, excepting so far as the same remained unsold. This seems a very curious and circuitous method of committing a crime, and it is not clear to their

Lordships why it was followed—probably because they are not familiar with the working of the Treasury; but the Courts below, who are familiar with these local matters, are of opinion that, without that circuitous process, it was impossible that the fraud could have remained for any length of time undetected. In point of fact it went on for several years, certainly for five years, but the exact period of time is not material. Then it was discovered, and the forgers were convicted and punished.

Now a claim is brought against Mohan Lal which is stated in the sixth paragraph of the Plaint, on the two grounds of the misappropriation of the stamps by Hinga Lal, and of the misconduct of Hinga Lal by falsifying his accounts and so causing loss to the Government. The Plaint states that the stamps misappropriated by Hinga Lal amounted in value to Rs. 18,100 or more.

In order to recover upon that agreement the Plaintiff must show that there is a loss or deficiency arising by the misconduct of an agent appointed by Mohan Lal, or on his nomination.

Upon that issue several defences are offered. First it is said that Hinga Lal was not the agent of Mohan Lal. Hinga Lal was employed in the Treasury from the year 1859 onwards, and it is admitted on the part of the Appellant that up to the year 1873 Hinga Lal was the agent of Mohan Lal: he was appointed by him, was paid by him, and, it may be assumed, was dismissible by him. But in the year 1873 the Government appointed Hinga Lal to a definite office, that of accountant in the Treasury, and instead of Mohan Lal paying him, thenceforward the Government paid him. It is contended that the change so altered Hinga Lal's position, that it made him the agent of the Government instead of the agent of Mohan Lal. The question is not of agency

generally, but whether Hinga Lal was an agent within the purview of this agreement? Both Courts below have found that he was, and as far as regards the issue whether Mohan Lal nominated Hinga Lal, their finding ought to be taken as conclusive under the usual rule, that being a pure matter of fact. Whether Hinga Lal was agent within the purview of this agreement is a matter of law. Their Lordships are of opinion that the Courts below have come to a right conclusion upon the evidence, and that, although it is not proved beyond possibility of doubt, it is sufficiently proved, in the first place that Mohan Lal nominated him, and, in the second place, that the change which took place was not such as practically to alter the relations between Mohan Lal and Hinga Lal, considering them as principal and subordinate. In point of fact there is reason to believe from Mohan Lal's own letter which he wrote on the occasion, that no such alteration could have been in his contemplation. It was he who applied for the change, and he applied for it on the ground that his work had increased, and his security was onerous to him, and he begged that he might be relieved from the payment of the staff, including Hinga Lal, and also that his salary might be increased so as, he says, to be up to the standard of the security filed by him. The salary was increased, and, as he made no further application, we may fairly assume that he considered it adequate to the security that he gave.

Taking Hinga Lal to be the agent of Mohan Lal within this agreement, has there been misconduct on his part within the agreement? Of course there has been the very grossest and most glaring misconduct, because he has committed forgery, but the suit is not founded on the forgery, and probably no suit could be founded on the forgery, because the misconduct contem-

plated by this agreement must be some misconduct connected with the business of the agency, and forgery is in no way connected with the business of the agency. For instance, if Hinga Lal, after receiving the stamps issued out of the Treasury to him, had absconded with them that afternoon, that would have been misconduct chiefly connected with his business as agent of Mohan Lal, and such a case would have fallen within the agreement.

There is no doubt that on this part of the case a good deal of difficulty has been introduced from the circumstance that what may be called the root of the misconduct was the forgery, which would not directly afford ground for suit. But in two respects there is misconduct which is directly connected with the agency of Hinga Lal, that is to say, the misappropriation of the stamps which he represented to have been sold, and the false accounts which he rendered month by month, and in which he represented those stamps to have been sold by the vendors.

Then comes the question whether, there being misconduct within the meaning of the agreement, the loss or deficiency has arisen in consequence of that misconduct? As respects the misappropriation there is, no doubt, the difficulty that has just been mentioned of the forgery being calculated to cause loss in the first instance, and of its being necessary to disentangle the two things. It seems to have been very much argued in the Court below, and the point has been mooted here, not by the Appellant's counsel, but by this Board, and very carefully and ably argued at the Bar by the Respondent's counsel, whether it was possible to attribute the loss to misappropriation of the stamps, and after much doubt their Lordships are of opinion that the Courts below have rightly connected the loss with the misappropriation; that, supposing the accounts

to be now taken between the Government on the one side, and the Treasurer of Lucknow on the other side, the Treasurer cannot claim to be allowed in account those moneys which were produced by the forged stamps, and which were used by Hinga Lal to cover his conversion to his own use of the genuine stamps that were issued to him.

The case on that point is strengthened very much by the false accounts. Hinga Lal represented in his monthly accounts that the whole of the genuine stamps which he represented as sold had been sold by the licensed vendors. In point of fact either they never were sold by the licensed vendors, or they had not at that time been sold, and, if his accounts had told the truth upon those points, then the forgery must have been discovered at once, and it is impossible that during a series of years the Government could have lost the money that it did lose by the forgeries.

That being so, the only other question is as to the amount to be recovered, and on that point there is a difference between the two Courts. With respect to the sum of Rs. 11,700 the two Courts agree. But there is a further sum, making in the whole Rs. 18,100, the amount claimed, which the Judicial Commissioner has allowed, so far varying the decree of the Court below.

It is not necessary now to go into the evidence upon that point, because it is clearly shown in the judgment of the Judicial Commissioner that the reason for the District Judge giving judgement only for the lesser amount was that he made a slip in construing the evidence. He had thought that there was a contradiction in the evidence, because one passage of it shows the larger amount of stamps allowed by the Judicial Commissioner to have been sold, while in another a lesser amount is stated. There is however no contra-

diction, because the two statements refer to two different periods of time, and the claim made in this suit embraces the longer period. Therefore the Judicial Commissioner was perfectly right in allowing the larger amount.

That being so, their Lordships are of opinion that the appeal of Mohan Lal should be dismissed with costs.

With respect to the cross appeal their Lordships think that the decree ought not to be varied in respect of the costs before the Judicial Commissioner, and that the cross appeal should be dismissed with costs.

Their Lordships will humbly advise Her Majesty in accordance with that opinion.