Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rambuksh Singh and others v. *Jugutnarain Singh and others, from the late Sudder Dewanny Adawlut North-Western Provinces of Bengal; delivered* 11*th February*, 1870.

Present:

SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THIS is an *exparte* Appeal. The Suit out of which it arises was brought by the Appellants against 126 Defendants to recover the value of the cash goods and other properties of the Plaintiffs, plundered and destroyed during the Mutiny by a large body of plunderers. The cause was heard and decided by the Assistant Sudder Ameen of Goruckpore, who dismissed the Suit against all but thirteen of the Defendants, against whom he gave a decision in favour of the Plaintiffs for 21,498 Company's rupees 10 annas 3 pice, which he found to be the value of the Plaintiffs' property so destroyed or plundered. The value laid in the Plaint was 93,450 rupees. From this decision eight of the Defendants appealed. The Plaintiffs also appealed from that part of the decision which was given in favour of the Defendants. The late Sudder Court at Agra dismissing the Plaintiffs' Appeal, reversed the decision against the Defendants, including those who had not appealed from the Decree. The Appellate Court proceeded on the ground that, as the evidence was, in its opinion, untrustworthy and insufficient, the decision founded on it ought not

to stand even against those Defendants who had not appealed.

From this decision the present Appellants have brought their Appeal, and contend that they are entitled to recover the full unreduced amount of their demand against all the Defendants, repeating here the contention raised by their own Appeal.

In the course of the Suit, the Judge, at the request of the Plaintiffs, and without any apparent opposition from the Defendants, directed an inquiry by a Commissioner, who was ordered to proceed to the place and inquire on the spot as to certain points stated in the Commission. This Commission, in addition to some special directions, includes the following :—

"In the third place he will inquire from the residents of the locality and its vicinity, who may in no way be connected with the inquiry, as to who plundered the Plaintiffs' house."

The Commissioner appears to have been carefully selected, he was an officer of the Court, and he appears to have conducted his inquiry carefully and pursuant to his instructions. He made his return to the Court according to his instructions, and that return in the form of a Report, see p. 97 of the Record, was considered by the Court, and was a main ground of the decision.

The grounds on which the Principal Sudder Ameen, proceeded in dismissing the Suit against the majority of the Defendants, and in reducing the claims against those whom his decision affected are these :—1st. That the proof of identity was insufficient, the Judge deeming the witnesses on that head tutored, and that their evidence was incredible in its nature, from the multitude of Defendants whom each witness alleged that he was able to identify. As to the value of the property, the Judge thought that the claim was swelled by the introduction into the demand of a large sum of money, and of some other property, the presence of which in the house at the time of the plunder he thought not proved.

In arriving at the conclusion which he formed, the principal Sudder Ameen relied, on the Report before referred to, but he did not found his decision exclusively on that Report. Of the witnesses who were examined before him on the point of identity, two ascribed the whole plunder to two deceased persons,

a considerable number of witnesses declared themselves unable to say who the plunderers were, whilst nine witnesses whom the Commissioner declares to be persons of respectability, and unconnected with the parties, and whose evidence he relied on, ascribe the plunder to the instigation of certain persons as ringleaders, to whom the Plaintiffs' case, and his evidence in general, ascribe the origin of the injury. The Judge examined two of the Plaintiffs separately on this part of the case, and as their evidence was consistent, and also consistent with the finding of the Commissioner, he ultimately came to the conclusion that the identity of those Defendants against whom he decreed was proved.

The Court of Appeal appears to have overlooked the fact that the main evidence in the cause had received this important corroboration. The Judges of the Appeal Court allude in their Judgment to the eighteen original witnesses whom the Plaintiffs produced as their witnesses in the cause, and it is the evidence of these persons which they treat as wholly unworthy of credit. Their reversal then, of the Judgment of the Court below, on the facts, is not satisfactory, since they have failed to consider the propriety of that decision by the light of that corroborative testimony on which it was principally based. The observations of the Judges that the Magistrate had thought the criminal charge false, seem not to be borne out by his Report; and their observations on the want of probability of the sum of 16,000 rupees, remaining for five years in deposit in the vault, are scarcely weighty enough to overpower the positive testimony that such a sum remained in the vault, when all the corroborative testimony as to the house containing a considerable sum in cash is viewed in connection with the other evidence. It is by no means involved in this account that the very coins remained there. If this amount of money had been originally lodged there, and had been by subsequent transactions unreduced in amount, the evidence would not have been in conflict with such hypothesis, their Lordships therefore think that the reasons assigned for the reversal of the finding of the Sudder Ameen are in themselves unsatisfactory; and they will proceed to consider that decision as the Court at Agra should have considered it. A concurrence of opinion exists

between the two Courts on the general insufficiency of the evidence as to identity. The Courts below have on such subjects advantages which do not generally belong to this Appellate Tribunal, and their Lordships are not disposed to interfere with conclusions of fact, except where they are clearly satisfied that there has been error or mistake in arriving at such conclusions. This case, on this point, so far from exhibiting any proof of mistake or error, affords, on the contrary, very strong indications of proper caution and discrimination on the part of the Judge who tried the cause, in discrediting the witnesses who deposed so rashly and unhesitatingly on the often doubtful point of personal identity.

The Principal Sudder Ameen appears to have proceeded throughout very cautiously in considering the evidence. He appears, from his observations, to have been fully aware that such suits might be made the means of great oppression, and to have watched and scrutinized the evidence with a close attention, and not unreasonable jealousy. Considering the numbers concerned in this outrage, the time of its commission, and the terror which the nature of it must have inspired, their Lordships cannot suppose it likely that many unconcerned persons would remain to be witnesses of what took place, still less that they would possess at such a time extraordinary powers of observation and memory. Their Lordships think also that the Judge acted rightly in the way in which he limited his finding as to the cash, and that the reason assigned for his rejection of the larger amount, viz., the discrepancy in the statements of the owners concerning it, justifies such rejection.

On the remainder of the case, it is sufficient to observe that the whole amount of the value found does not appear unreasonable; the house was one for residence as well as for business; the owners were wealthy, the vault was built certainly for the purpose of securing valuables; the neighbours would probably know that valuables were kept in the house, and the corroborative evidence supports the conclusion, that a considerable amount of cash was on the premises. No reason appears, therefore, for disturbing this finding on the ground that the appreciation of the value is excessive. The remaining

question is, whether the Court below had reasonable evidence before it, that the Defendants, against whom it decreed, were concerned in the plunder.

The direct evidence in the cause applied to them all. The ringleaders would be probably better known than each of their numerous followers. They might also, it is true, be more exposed to be charged on mere suspicion, and therefore great caution and discrimination were necessary in applying the evidence before the Commissioner to the consideration of the case as originally made. Such caution and discrimination appear to have been exercised. The very grounds for jealousy on the score of the old feud, and the alleged mutual wrongs inflicted on each other during the time of disturbance, still tend to point the charge to those whom the decision affects. The decision of the Judge who tried the case, which is one entirely of fact, appears to have been carefully arrived at, and their Lordships can find no sufficient reason for disturbing it. The result will be, that the decision of the late Court of Sudder Dewanny Adawlut, at Agra, must be reversed, so far as it reverses the finding of the Lower Court against the Defendants, and that the Decree of the Court of the Principal Sudder Ameen will stand restored and affirmed. Their Lordships will, therefore, humbly advise Her Majesty accordingly. There will be no costs of the Appeal here under the circumstances of this case, but the Cross-Appeal of the Respondents to the late Court of Sudder Dewanny Adawlut must be dismissed with costs in that Court.

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