

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gour Chunder Roy v. Protap Chunder Das, from the High Court of Judicature, at Fort William, in Bengal; delivered 5th March 1880.

Present :

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

ACCEPTING the facts found by both the Courts in India, their Lordships agree with the High Court that the liability of the Appellant, as accommodation acceptor of the hundis, depends on the answer to be given to the question whether he knew of and consented to the advance interest being taken. The High Court has answered the question in the affirmative, and their Lordships entirely agree in that conclusion. Monohur Laha's evidence alone is sufficient to establish the fact that the Defendant did know of and consent to the payment of the advance interest; and he was a witness called by the Appellant. Nor do their Lordships think that the testimony of the witnesses adduced by the Plaintiff is, though exceptions may be taken to parts of it, altogether inconsistent, as has been argued, with that of Monohur Laha. That which relates to a conversation between the Plaintiff and Defendant in the billiard room of the former, upon which there was no cross-examination, is quite consistent with all that Monohur Laha has deposed to. Again, the probabilities of the case appear to their Lordships to be all in favour of the conclusion of the High Court. Pogoze, the

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drawer of the hundis and the party primarily liable upon them, was absent from his place of business; his affairs were evidently in a very shaky condition; and although it was possible that when he came back again he might be able to make some arrangement for the payment of the hundis, he had no present means of meeting them. In these circumstances it is hardly conceivable that the Plaintiff would enter into a transaction the effect of which would be to relieve the only solvent party from liability upon the hundis. On the other hand, it was much to the interest of the Defendant to take the chance of the re-establishment of Pogose's credit, and therefore to assent to such an arrangement as was actually made.

Their Lordships, therefore, will humbly advise Her Majesty to affirm the judgment of the High Court, and to dismiss this Appeal, with costs.