

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Lall Chand and others v. The Agra Bank
(Limited), from the High Court of Judicature
at Fort William in Bengal ; delivered
13th June 1891.*

Present :

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Sir Richard Couch.*]

The question in this appeal, one of fact only, is whether a cheque drawn by a firm of MacNeill & Co. upon the Respondent Bank, payable to the Appellants or their order, for Rs. 15,000, was paid to the servant of the Appellants. The cheque was received by the Appellants on the 14th August 1888, and on the following day they endorsed it in blank, and delivered it to their servant Sewlall, who presented it at the Bank for payment. The Respondents, in their written statement, said that the cheque was presented for payment, and the amount thereof was paid to Sewlall, but, in the judgment of the learned Judge of the High Court at Calcutta who tried the case, it is said that, after the Advocate General had opened the Plaintiffs' case, Mr. Phillips, the Defendants' Counsel, applied for leave to amend the written statement by the addition of a paragraph which would enable him to raise the defence that if, as

a matter of fact, the Bank did not pay Sewlall, but some other person who was not a servant or agent of the Plaintiffs, but who represented himself to be so, such payment was made in consequence of the negligence and default of Sewlall, and without any negligence or default of the Bank, and that the Bank was discharged by such payment. The amendment was opposed by the Advocate General, but was allowed. No evidence was given by the Defendants in support of this view of the case, but it may not be unimportant that this application was made. The principal witness for the Plaintiffs was Sewlall, who said that he took the cheque to the Bank and showed it to a Baboo (pointing to one in Court), who told him to sign it and make it over to the Munshi; that he signed it and handed it to the Munshi, who wrote something on it in English and handed it back to the same Baboo;—the reason for this was that the cheque bore endorsements in Nagri which the Munshi could, but the Baboo could not read;—that about a quarter of an hour afterwards the Pass Baboo gave the cheque back to him, and then he gave it to the Cashier Baboo. He then said, “I handed the cheque to the Cashier Baboo. He asked me, ‘In what shape do you want it?’ I said, ‘2,000 in small notes, and 13,000 in 13 notes. After that the Cashier said to me, ‘Go to the Poddar Baboo.’ The Cashier did not give me back the cheque. He kept it. On going to the Poddar, I said to him, ‘Pay me 15,000.’ I went to the Poddar Baboo immediately on leaving the Cashier. The Poddar Baboo said, ‘Be seated, you will get it half an hour afterwards.’ I took my seat on a stool or bench. I sat there for about half an hour. I then asked the Poddar Baboo for payment, and he said, ‘The numbers have not come yet.’ I then commenced pacing up and down there in

“ front of the counter. I did that for a short
 “ time for two or four gurries. After that I
 “ again asked the Poddar Baboo for the money,
 “ and he said, ‘ Why, I have made the payment.’
 “ I said, ‘ How is that I have not received it?’
 “ He said, ‘ All I know is that the payment is
 “ made.’ I said, ‘ I have not received it, you
 “ ‘ must have paid it to some other person, some
 “ ‘ person whom you do not know.’ I then
 “ made a great noise. . . . The Poddar
 “ Baboo sits next to the Cashier Baboo, and I
 “ moved from one to the other, but when I sat
 “ on the stool, that was about eight or nine
 “ cubits off.” Three men were brought into
 Court, one of whom he said was the Munshi,
 and another (Koylash Chunder Bose) was the
 Pass Baboo, but the Cashier Baboo was not
 amongst them, nor was the Poddar. He con-
 tinued, “ That Poddar Baboo to whom I re-
 “ ferred does not now sit on the same seat as
 “ he used to. That man (pointing to a man in
 “ Court, who gives his name as Mohendra Nath
 “ Pyne) sits where the old man sat. This is the
 “ Cashier (gives his name as Nobokisto Sen
 “ Gupto).” On cross-examination, he said, “ I
 “ do not know Mohendro Coomar Pyne. I know
 “ a man named Mohendro, who used to pay me
 “ before. But on that occasion Mohendro was
 “ not there. Before that occasion I had seen
 “ the man shown to me, and on that occasion
 “ I saw him coming out of an inner room.
 “ There were two Poddars, one a lad, but I had
 “ to do with only the senior one. Neither of
 “ the two I saw that day were amongst those I
 “ saw to-day in Court. On that day I had no
 “ talk with Mohendro Coomar Pyne, except
 “ this, that Mohendro Baboo took me to the
 “ Currency Office. That lad also went to the
 “ Currency Office. The senior Poddar did not
 “ go to the Currency Office.” He was shown a

man, Grees Chunder Pal, and said he went with him to the Currency Office, that he was the Poddar's lad of whom he had spoken, and that he did not pay the 15,000 into his hands.

The principal witness for the defence was Mohendro Coomar Pyne, who said he was the Poddar at the Agra Bank. "Grees Chunder Pal is one of my assistants, and Mutty Lall Pal is another. I remember the 15th August last. On that date I and Grees Chunder Pal were paying out money. No other Poddar was there on that day paying out money. I know Sew Lall. I had known him boforo the 15th August. Before that day I did not know for a fact whose service he was, but I know that he brought cheques from Lal Chand Kanyeram, the Plaintiffs' firm. I saw him on the 15th August. That is the man in Court (shown Sew Lall). On that day he came with a cheque for Rs. 15,000, in favour of Lal Chand Kanyeram, and wanted payment of that cheque. He came up to where I was with the cheque, and in the first instance handed it to Grees Chunder Pal. Grees Chunder took the cheque and handed it to Nobo Kisto Sen Gupta, the note keeper. When Sew Lall handed the cheque to Grees he said nothing. . . . I said to Sew Lall, 'Wait, the notes will have to be taken out, the numbers taken down, and then payment will be made to you.' I did not say to him, 'You will have to wait half an hour.' I said nothing like it. After this the numbers of certain notes were written down, and then Gojendro Nauth Gupta gave over those notes and the cheque to me for payment. That is the man who wrote down the numbers of the notes, and owing to the circumstances of my having other work in my hands at the time to dispose of, I said to Grees, 'You call forward

" this man, and make over payment to him."
 " Upon that Grees called out 'Shib Lall.' A
 " person said, 'My name is Shib Lall.' Grees
 " asked, 'Whose man are you?' He said 'Lal
 " Chand Kanyeram's.' I saw the person who
 " said that, he was right in front of me, it was
 " Shib Lall. The same person who I have
 " pointed out here in Court. . . . Grees
 " Chunder asked him, 'What is the amount of
 " your cheque?' He answered 15,000. Upon
 " this Grees Chunder counted over the notes
 " and gave them to him. Before us, Sew Lall
 " counted out the notes one by one, wrapped
 " them up in his *kupra*, and took them away.
 " . . . He went away with these words,
 " 'Baboo, everything is correct.' I saw him
 " again on that day a little more or less than an
 " hour afterwards. I saw him again. I was
 " still in the same place behind the counter. He
 " came back to me and said, 'Where is the
 " money for my cheque?' I said, 'Have you
 " 'lost your senses, are you mad? You take
 " 'away the money, and now come and ask for
 " 'the same money again.' He said, 'I have
 " 'been away getting my shoes mended.' I then
 " said, 'Is it the case that you were robbed of
 " the notes there?' He remained silent." On
 cross-examination he said, "I was counting notes
 " and making payments to another person. That
 " was why I could not make this payment. I
 " was near the end of that payment. I asked
 " Grees because the two of us used to make
 " payments. Even if I am engaged, and five
 " different payments have to be made, the whole
 " of the five papers are brought to me, even
 " though I am engaged. Grees and I are em-
 " ployed in making payments, and sometimes
 " Motilall Pal makes payments. While Grees
 " was making the payments I had got through
 " the payment I was making, and was sitting

“down looking on.” When asked when he first said to any one that he had paid Sew Lall and that he had come again to be paid, he said, “I first stated that to Modusudun Baboo. That was when he asked, ‘What is the golmal about.’ That was about an hour after the money was paid. All the Poddars who were there in the employ of the Bank are still there, not a single one of them has left. None of them have taken leave. On that day, the 15th, a Baboo and a Sahib came to the Bank.” This was Mr. Leslie, the Plaintiff’s attorney, who is called by the witness a vakeel. Questioned, “Did you hear the Vakeel make inquiry about the cheque?” he said, “Yes, I think he asked the Kajanchi Baboo, Modusudun Baboo. I showed him the cheque. I say I do not recollect the face of the vakeel to whom I showed the cheque. Yes, the Vakeel Sahib asked to whom the cheque had been paid. I said to Seblall, the man of Lall Chand Kanyelall. The vakeel did not ask me if I could identify the man to whom payment had been made. I did not answer. How is it possible, as so many cheques are paid in the day? No, a certain Baboo did not prevent my answering further questions. What the vakeel did was this. He saw the cheque and came away. I showed him the cheque, and went away to other work. The Sahib saw the cheque and went away. The Sahib said nothing in my presence.” The value of this evidence may be tested by Mr. Leslie’s evidence, who, in their Lordships’ opinion, is a much more credible witness, and of whom Mr. Justice Norris, who tried the case, says in his judgment, “I believe Mr. Leslie implicitly.” Mr. Leslie, upon hearing from Sewnarain, one of the Plaintiffs, about the cheque, went at once to the Bank. He said in his evidence, “I keep a day book. I made a note

“ on paper of what occurred at the Bank and
 “ sent it down to be entered into the day book.
 “ I have read my note over and the
 “ entry in the day book. To the best of my
 “ recollection and belief that entry correctly
 “ describes what took place at the Bank.” The
 entry was put in, and was this:—“ Lal Chand
 “ Kaneeram; calling at the Bank by our Mr.
 “ S. J. Leslie, when he found that the Manager
 “ was not in, and on inquiry at the cash depart-
 “ ment was shown the cheque with a translation
 “ of the Jemadar’s endorsement as ‘ Siblall ’ on
 “ it, and on his asking the Cashier to whom it
 “ was paid, he said to the man whose name was
 “ on the back of the cheque, and on his further
 “ asking him if he could identify the man, he
 “ said, ‘ How was it possible, as so many pay-
 “ ments were made in the day.’ While we were
 “ asking for information, one of the Baboos
 “ from within the rail said to the Cashier, ‘ Do
 “ not answer any questions, say nothing more.’
 “ The person whom he took for the Cashier was
 “ a tall thin fair man, and the man who in-
 “ terfered was the same man who had the
 “ cheque and showed it to us.” It will be
 observed that Mohendro said he showed the
 cheque to the Vakeel. His evidence as to what
 passed is directly contrary to Mr. Leslie’s. After
 the entry was put in Mr. Leslie said, “ I saw the
 “ man who showed me the cheque here this
 “ morning. The man with spectacles on (Komala
 “ Persaud Soor). That was the man who said,
 “ ‘ Do not answer any more questions.’ I have
 “ not seen the other man to-day. There was a
 “ man something like him, but on thinking the
 “ matter over I do not think that was the man.”
 Kamoda Persaud Soor was a witness for the
 defence. He said, “ The Poddar, Mohendro
 “ Coomar Pyne, produced the cheque to Mr.
 “ Leslie,” and he went on to deny that there

was the conversation stated in the entry. This witness is also contradicted by Mr. Leslie. In addition to the estimate which the first Court formed of the relative credibility of the witnesses, it should be observed that Mr. Leslie's account of the nature of the interview is far the more probable one. It was his duty to examine into the facts of the case as effectively as he could, and he tells us that when he was doing that he was stopped by one of the officials. But, according to the story told by those officials, the only inquiry made by Mr. Leslie was so superficial that he need hardly have troubled himself to make it. The learned Counsel for the Respondents relied upon the evidence of Parat Singh, one of the Plaintiffs' witnesses, as contradicting Sewlall as to Mohendro not being the Baboo. He said that the Baboo paid him his money, that there were two Baboos sitting together there, and that Mohendro and Grees Chunder Pall were the two Baboos. Their Lordships do not think that this contradiction is of any value. The witness was in the habit of going to the Agra Bank, and may have spoken more from his general recollection of Mohendro being present when he received money than from his recollection of that particular occasion. Mohendro may then have left his seat for a time, as Sewlall says he saw him coming out of an inner room. Grees Chunder was examined, and gave similar evidence to Mohendro's.

A suspicious fact in the Respondent's case is that Motilall Pal, who was said by Mohendro to be one of the Poddars, and sometimes to make payments, was not called, nor was his absence explained. He was a most important witness. Sewlall and Mohendro were examined on the 27th February, and Grees Chunder and the other witnesses for the defence were examined on the 1st March. Motilall Pal might then have

been called. As regards the demeanour of the witnesses, Mr. Justice Norris, who tried the case, in his judgment says of Sewlall, "He gave his evidence in a manner which impressed me most favourably, his answers were straightforward and to the point, he showed no sign of prevarication, he was unshaken in cross-examination." Of Mohendro he says, "I do not believe this witness. He appears to me to have got up his story, to have rehearsed his part. The same observations apply to the evidence of Grees Chunder Paul. I do not believe him. I think he was swearing by the card."

Another circumstance which impresses their Lordships' minds is the failure of the Bank officials to sift the case when Mr. Leslie went to the Bank. Sewlall's demand involved, to say the least, a grave imputation upon the way in which the business had been conducted. In such circumstances it would be reasonable to expect that the head officer of the Cash Department would have inquired into the matter, and had all the Poddars confronted with Sewlall, instead of Mr. Leslie's request for information being met by a refusal to answer any questions.

Their Lordships cannot agree with the learned Judges who heard the case on appeal that the alternative was simply whether the Bank officers or some of them appropriated the money, or Sewlall made a mis-statement when he said he was not paid. There was another possible alternative, viz., that by mistake or inadvertence one of the Poddars had paid the wrong person, and the Bank officers, who may at first have thought they had paid Sewlall, persisted in saying that they had.

Their Lordships are of opinion, upon a full consideration of the evidence, that the decree of Mr. Justice Norris should not have been reversed,

and they will humbly advise Her Majesty to reverse the decree of the Appellate Court, to dismiss the appeal to that Court, with costs, and to affirm Mr. Justice Norris's decree. The Respondents will pay the costs of this appeal.
