

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Tewari Jaswant Singh v. Lala Sheo Narain  
Ial and Cross Appeal from the High  
Court of Judicature for the North-Western  
Provinces, Allahabad; delivered 16th De-  
cember 1893.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Plaintiff in this suit, who is Respondent in the principal appeal, sued the Defendant, who is Appellant in that appeal, for principal and interest due on six hundis drawn by the Defendant for the aggregate sum of Rs. 13,600 upon the firm of Gobind Das Lachhman Das of Bombay. The date of the hundis was the 1st April 1886, and they were made payable 61 days afterwards.

The plaint was filed on the 11th December 1886. It describes the Plaintiff as proprietor of the firm Dilsukh Rai Radha Kishan in the town of Etawah, and the Defendant as a Brahman resident in the district of Etawah. The case made is to the effect that from the year 1881 to 1886 the Defendant was in the habit of raising money from the Plaintiff's firm by drawing hundis on Bombay or Calcutta, which were

never presented to the drawee, but when due were met partly by payment and partly by renewal; that the hundis of April 1886 were drawn in this course of dealing; that not being duly met they were presented at Bombay, and were dishonoured by the Bombay firm, who denied all knowledge of their writer.

In his written statement the Defendant met the Plaintiff's case by a flat denial of the whole. He says that the hundis are forgeries; that the Bombay bankers are unknown to him and are in collusion with the Plaintiff; that he never purchased or sold a hundi; that he does not even know the way in which a hundi is drawn; that he has no account-books, nor any banking shop, nor does he carry on any trade; that his only business is advancing loans and holding zemindari estates; that he never had any dealings with the Plaintiff even for a day; that the Plaintiff's family and his are at enmity; and that the Plaintiff's motive is to satisfy a grudge and to defame the Defendant.

The evidence given in the case is of three kinds; first, that which bears directly upon the making and delivery of the hundis in suit; secondly, that which relates to handwriting; and thirdly, that which goes to show that the Defendant did raise money on hundis, and that the course of dealing between the parties was such as the Plaintiff alleges.

Each side dwelt very strongly on the improbabilities attending his opponent's case. On the Plaintiff's side it is said to be incredible that he, who is a prominent banker in Etawah and the head of the Treasury there, should from greed or, as the Defendant suggests, from spite, concoct a series of elaborate forgeries, and procure a number of other persons to aid him by forgery and perjury, at the risk of severe punishment and absolute commercial and social ruin.

On the Defendant's side it is said to be incredible that he, who is a person of large estates, great wealth, and high social rank in Etawah, should raise money for years by giving hundis, and those drawn on firms unknown to him or to the Plaintiff's house; or that, if he did so, he should have the effrontery to perjure himself by denying transactions which he must have supposed to be capable of easy proof. Their Lordships confess that there is not much, if any, exaggeration in these arguments; and that the antecedent difficulties of each case appear so great that no help can be got by trying to balance them nicely against one another.

Not much more help is afforded by the direct evidence of persons who speak to the making of the hundis and their transmission to the Plaintiff's house. The Subordinate Judge who tried the case did not believe these witnesses. The High Court mention their evidence without comment on its credibility. Their Lordships do not here comment in detail upon it. It was closely examined in the argument, and the Plaintiff's Counsel hardly contested the opinion then expressed by their Lordships that it is quite untrustworthy.

The evidence of handwriting is left in a very unsatisfactory state. Before the Subordinate Judge no comparison of undoubted handwriting with the disputed handwriting was made. What was done was this:—the Judge made an officer of the Court read out one of the hundis while the Defendant sat in Court and wrote it from dictation; he then referred the documents to two pleaders for comparison; they reported that the papers were not in one and the same hand; the Judge agreed with them, and so decided against the genuineness of the hundis in suit. It is obvious that such a test as this would at best be hardly adequate; and that it might be

actually misleading, because the Defendant would have a motive for disguising his hand. The Judges of the High Court compared the hundis with some admitted signatures of the Defendant, but the only conclusion they drew was that there were no such differences as would justify them in finding that the evidence which went to support the hundis was false.

Their Lordships now turn to the Plaintiff's books and to the evidence connected with them which formed the main ground for the decision of the High Court in favour of the Plaintiff. The Subordinate Judge dealt with this part of the case in a very summary way, saying that "an account-book is nothing, it is one's private affair, and " he may prepare it as he likes." It is true that there may be accounts to which that description would apply. Other accounts may be so kept, and may so tally with external circumstances, as to carry conviction that they are true. And the Evidence Act, Section 34, therefore enacts that entries in books of account regularly kept in the course of business shall be relevant evidence, though not sufficient of themselves to charge any person with liability. The accounts in question are of such a nature that Mr. Doyne stated very fairly that unless they are forged the hundis must be genuine.

The books are proved by the Plaintiff's gomashtha Gulzari, who says that they show the daily accounts entered by himself and his brother, and are all genuine and correct. Extracts are given in the Record. There is a cash-book, a bill-book and a ledger, all referring to one another. Tracing some items through the extracts, their Lordships find the correspondence between the books to be exact, and there is no suggestion made that any discrepancy exists. It must be confessed that to forge elaborate accounts extending over six years, or even to

insert new sheets in such accounts, would be a most dangerous undertaking, and to make the different books correspond exactly would be a task of almost insuperable difficulty.

But there is even a better test of genuineness than the correspondence of the books with themselves, and that is their correspondence with other evidence. To apply this test their Lordships have traced the history of some of the items as disclosed by the Record.

They take item 13 in the list on p. 128 of the Record, as extracted from the account book. It is there entered that a currency note for Rs. 1,000, No. 30,477, was given to the Defendant on the 31st May 1883, and that he paid for it partly by drawing two hundis for Rs. 800 and partly in cash; and that this note was given in Government revenue on the 1st June 1883 through Wazir Ali in the tehsil of Etawah. In the bill-book (p. 112) the same transaction is entered, with the addition that the hundis were drawn on the firm of Gobind Das Lachhman Das. In the cash-book (p. 115) the same transaction is entered, showing that the Defendant was debited with only the sum of Rs. 775. 12 for his hundis. In the Rokar-bahi (another cash-book) it is shown (p. 119) that the Plaintiff received in cash Rs. 224. 4 on the sale of the currency note, leaving Rs. 775. 12 to the debit of the Defendant. The Lekha-bahi or ledger (p. 109), under the head of "Account of Tewari Jaswant Singh," enters the payment of Rs. 775. 12 to his debit, and the hundis on Bombay at the rate of Rs. 96. 15. 6 per cent., (equal to the gross amount of Rs. 775. 12) to his credit. These books, except the list, as to which it does not appear from what book it was extracted, contain cross references to one another.

Pausing there, it is fit to remark that not only is there no discrepancy between the several

books, but each book appears to contain that amount of difference which is appropriate to its character. The bill-book gives an additional particular (of importance as it happens) with respect to the hundis, viz, that they were drawn on Gobind Das. The two cash books show the exact amount of cash paid and received by the Plaintiff and the Defendant respectively on the sale of the currency note. The ledger sums up the net result of the transaction. It is difficult to believe that any forger would have the cleverness to think of such things, but in the course of regular book-keeping they would come naturally enough.

The matter however does not rest there. The register of the Etawah Treasury shows that on the 1st June 1883 a note, No. 30,477, for Rs. 1,000 was paid in by Wazir Ali on account of revenue due from the Defendant. Wazir Ali is the Defendant's servant. He was not called. The Defendant called himself immediately before the hearing of the case, but said nothing on this point. It is placed beyond doubt that the Defendant had the currency note, and paid for it partly by hundis drawn on Gobind Das.

Their Lordships will now take item No. 24 in the same list (p. 129). The transaction here set down is that a hundi drawn by the Defendant through Man Singh, a broker, on the 14th December 1884 for the sum of Rs. 2,500, was bought by the Plaintiff and paid for by crediting one Durga Pershad with Rs. 1,800 and paying Rs. 625 through Puran Singh. The bill-book (p. 122) shows that the hundi was drawn on Gobind Das, and that the discount was 3 per cent. The Rokar-bahi (p. 125) shows the payment of the Rs. 625 through Puran on the day following the date of the hundi. In the Lekha-bahi there are apparently two entries, one (p. 126) debiting and crediting the full amount

of Rs. 2,500; the other (p. 120) crediting the Defendant with the amount of the hundi less the discount, and debiting him with the two payments to Puran Singh and Durga Pershad, equal to Rs. 2,425.

Durga Pershad was examined. He stated that the Defendant held a house upon lease from him, and that in Sambat 1941 (a year which would include the 14th December 1884) he had received from the Plaintiff's house the sum of Rs. 1,800 on account of rent due from the Defendant, and had duly given the Defendant credit. He received the balance Rs. 700 through Wazir Ali. He produced his account books in confirmation of this statement. The Defendant, who was examined on his own behalf five days after the examination of Durga Pershad says nothing about it, and he does not call Wazir Ali or Puran Singh, both his servants.

Their Lordships take it as conclusively proved by independent testimony that the sum of Rs. 1,800 shown by the Plaintiff's books to be paid to Durga Pershad on the Defendant's behalf was so paid, that the Defendant has had the benefit of the payment, and that the consideration which he gave for it was a hundi drawn on Gobind Das.

Their Lordships need not go through other items in the books nor deal with the evidence showing that the Defendant had bill transactions with other people. The cases they have examined are sufficient, in the entire absence of counter-vailing evidence, to establish three propositions. They prove that the Defendant's sweeping denials of his connection with bill transactions are not true, and thereby they materially shake his credit. They prove that he drew hundis on Gobind Das and sold them to the Plaintiff, thereby displacing the Defendant's flat denial of dealings with the Plaintiff, and meeting the im-

probability that he should have drawn upon a house unknown to him, by proof of the fact that he did so. They lead to the belief that the Plaintiff's books are authentic and honest, and his gomashtha's evidence true, so that the course of the dealing alleged by the Plaintiff terminating in the six hundis now sued on is supported.

Their Lordships agree with the High Court that the Plaintiff's case is a true one and the Defendant's false; and they will humbly advise Her Majesty to dismiss the Defendant's appeal.

The Plaintiff has presented a cross appeal, on the ground that the decree of the High Court does not give any interest subsequent to their decree. On this point there is no dispute between the Counsel. Mr. Doyne admits that interest should be given, and Mr. Branson admits that the omission is a mere slip which might have been set right on application to the Court, and that he cannot ask for more than 6 per cent. On this appeal therefore their Lordships will humbly advise Her Majesty to vary the decree by directing that the amount decreed should bear interest at 6 per cent. per annum until payment.

Each party should bear his own costs of the cross appeal. The Appellant must pay the costs of the principal appeal.

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