PRIVY COUNCIL.

P. C.
1927

Jan. 21.

SONATON PAL (DEFENDANT No. 3)
v.
GALSTAUN (PLAINTIFF) AND OTHERS.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Privy Council Practice—Record of Appeal—Inclusion of unnecessary documents.

Upon an appeal to the Privy Council, documents not material to the appeal should not be included in the record. If one party wishes a document to be included but the other party considers it unnecessary, the matter should be referred to the High Court or its Registrar. Further, it does not follow that because unnecessary documents have been printed in India, they should be included in the books bound up for their Lordships. It is the duty of the Solicitor in England to make a selection of the necessary documents; the other papers being ready in case they be required. In cases of doubt the solicitor should take the advice of counsel on the point, for which purpose, on application being made, a fee will be allowed.

APPEAL (No. 77 of 1925) from a decree of the High Court (January 23rd, 1924) reversing a decree of the Subordinate Judge of Dacca. The appeal depended upon a question of fact; the present report is merely for the purpose of recording the observations of their Lordships with regard to the documents to be included in the record of appeals to the Board.

Narasimham and *P. V. Subba Row*, for the appellant.

Sir George Lowndes, K.C., and *Dube*, for the first respondent.

Jan. 21. The judgment of their Lordships was delivered by

LORD PHILLIMORE. Their Lordships do not require to hear counsel for the first respondent, who alone appears.

Present: LORD PHILLIMORE, LORD CARSON, LORD DARLING, MR. AMEER ALI AND SIR LANCELOT SANDERSON.

This is an action brought by the first respondent, the plaintiff, to enforce against the estate of one Sookias deceased, an equitable mortgage by deposit of deeds accompanied by a letter or memorandum explaining the deposit. The contesting defendant, who is the present appellant, was a judgment-creditor of the estate of the deceased, and interested, therefore, in disputing the validity of this mortgage, which, as the accounts have now been agreed, would, if valid, exhaust or nearly exhaust the whole property. His case was that there was no such equitable mortgage; that there was no such deposit of deeds on the date mentioned, if ever, and that, at any rate, it was not a deposit to secure a debt; if it was a deposit at all, it was for other purposes; but in substance he denied that there had ever been a deposit and he said that the alleged letter accompanying the deposit was a forgery. The deposit was alleged to have taken place in May, 1914, probably on the 22nd, and the letter, which followed, was dated the 30th June. It is to this effect: "J. C. Galstaun, Esquire," then his address is given. "Dear Sir, I handed over the title deeds of my Gope-"chur property to you on the 22nd May, 1914, with a "view to create a security for the debts that I owed you "and for further advances and acceptances on my "account. As evidence thereof I give you this letter, as "desired by you." And then there follows a list of the documents, and it purports to be signed by Sookias. The plaintiff and his manager both deposed to the fact of the deposit and to the correctness and genuineness of the signature by Sookias, and their evidence was supported by a brother of Sookias. Nobody was called to say that the signature was not the signature of Sookias, except one man who disputed the genuineness of a number of signatures by Sookias which were found by both Courts to be genuine, and therefore his

1927

SONATON PAL v. GALSTAUN.

evidence was not of much importance. The Subordinate Judge, however, found that there had been no deposit and that the letter was a forgery, basing his judgment upon certain correspondence which had passed between the plaintiff and Sookias, chiefly letters written by Sookias which, in his view, did not look like there being an equitable mortgage ; upon the fact that the handwriting was laboured in the way that an imitation would be laboured and that there were certain grammatical faults in the letter as produced ; upon the motive which the plaintiff would have, having been extremely fond of the Sookias family, to preserve the property of the Sookias family for the family from their creditors, and upon various small grounds of suspicion.

In those circumstances, there being nobody, except the one discredited individual, who would venture to say that the signature was not the signature of Sookias, the only motive to be alleged against the plaintiff was not his own greed of gain but his charity for people who may have belonged to his community and were distantly related to him, and then really for a comparatively small amount, because if there had been no such mortgage, the plaintiff's debt, which is admitted, would have swept out, in competition with the other creditors, the greater part of the estate. However, the learned Subordinate Judge upon those grounds took upon himself the very bold course of disbelieving this evidence, and finding perjury and forgery.

The High Court, in an extremely careful judgment, have reviewed that evidence and have come to the conclusion that there was no warrant at all for suspecting this gentleman or his manager of any such crimes.

With regard to the handwriting, so far as it is a matter for the Courts unaided by expert evidence to

examine it, the High Court came to a different conclusion to that of the Subordinate Judge, and their Lordships here, having compared several of the signatures of Sookias, see no reason to disagree with the view taken by the High Court.

That being the case this appeal seems to have been an audacious appeal, and, in their Lordships' opinion, entirely fails, and their Lordships will humbly advise His Majesty that it should be dismissed with costs.

But their Lordships have not concluded all that they have to say in the matter. A very large and cumbrous record has been produced and put before their Lordships, containing, amongst other things, a mass of accounts which were obviously immaterial after the High Court had said that the parties had agreed the accounts between them and had agreed what was due to the plaintiff as a creditor. The solicitor acting here for the appellant had notice in a letter sent to him by the Registrar of the 3rd November 1926, that attention would be drawn to the record in this case "which contains a large quantity of matter which "should not be included and which, as at present "advised, should the appellant succeed, I shall not be "prepared to allow on taxation." Their Lordships asked Mr. Narasimham what he could say about this subject. He pointed out that in Calcutta it was very difficult, if one party contended that the documents should be printed and made part of the record in the case, for the other party to resist it. Their Lordships do not agree with this statement. They have the advantage of the assistance of Sir Lancelot Sanderson, who has just returned from India, and they understand that the practice, at any rate in Bengal (and this case comes from Bengal), is well settled. If one party thinks a document should be printed and the other party thinks it unnecessary, reference is made

1927

SONATON PAL v. GALSTAUN.

to the Registrar of the High Court, who determines, at any rate in the first instance, what should be done. Their Lordships have no reason to suppose that the respondent did desire that these accounts should be made part of the record, but if he did, the appellant should not have rested content but should have gone to the Registrar or the Court for directions in respect of that matter.

That is so far as the legal advisers in India are concerned. In their Lordships' opinion, if the appellant had succeeded, all these costs would have been disallowed for the reasons given.

But there is another matter on which their Lordships have called for the attendance of the solicitor for the appellant here. It does not follow that because unnecessary documents have been printed in India, they should be included in the books bound up for their Lordships. It is the duty of the solicitor in this country to make a selection of the necessary documents. The other papers should be ready at hand in case they should be required. In cases of doubt, the solicitor should take the advice of counsel on this point, for which purpose, on application being made, a fee will be allowed.

Their Lordships have intimated the same opinion to other solicitors on other occasions. They have thought it necessary to require the attendance of the solicitor in order to make it quite clear to the profession that drastic action will be taken if more care is not used in this matter.

Solicitor for the appellant : *H. S. L. Polak.*

Solicitors for the first respondent : *Watkins & Hunter.*

A. M. T.