43 because of the proviso to that section which is in the following terms :—'For the purposes of this section an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.' The contention, therefore, that the cause of action on the promissory-note is one cause of action, and the cause of action for the recovery of the balance of Rs. 600 forms another cause of action, is not well founded." With all deference we are unable to agree with the learned Judges that a promissory-note executed for payment of a debt is ordinarily to be regarded merely as a collateral security for the debt. The deposit of title-deeds or mortgage as security is only an accessory right to secure the rendering of the main right, namely, the debt. But a promissory-note is *primâ facie* to be regarded as the record intended by the parties of the obligation to pay the debt. The decision is not in accordance with the cases already referred to above including the judgment of the Allahabad High Court in *Sundar Singh* v. *Bholu*(1) which is not referred to in the judgment.

For the reasons mentioned above we hold that the present suit is not barred by section 43 of the Civil Procedure Code. We dismiss the Second Appeal with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Spencer.

In re B. VENKATA ROW (FIRST PRISONER), APPELLANT.*

1911. December 4, 5 and 29.

Evidence—Expert in handwriting, value to be attached to evidence of—Corroboration of such evidence.

An accused should not ordinarily be convicted of forgery upon the uncorroborated testimony of a handwriting expert.

The value to be attached to the evidence of handwriting experts discussed.

APPEAL against the decree of V. VENUGOPAUL CHETTI, the Sessions Judge of the South Canara division, in Calendar Case No. 19 of 1910.

The facts of the case are fully set out in the judgment of SUNDARA AYYAR, J.

Messrs. *Kunjunni Nair* and *G. Annaji Rao* for the appellant.

The Public Prosecutor opposing.

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(1) (1898) I.L.R., 20 All., 322.

* Criminal Appeal No. 324 of 1911.

SUNDARA AYYAR AND SPENCER, JJ.

In re VENKATA ROW.

SUNDARA AYYAR, J.—The appellant, who was the first accused in Sessions Case No. 19 of 1910 in the Sessions Court of South Canara, was tried along with two other persons, the appellant for the forgery and the two others for abetment of the forgery of certain documents. These documents were certain income-tax records in the Udipi Taluk office and in the office of the Head Assistant Collector of South Canara. The forged documents related to the assessment to income-tax of one Vishnumurti Upadhyaya for the year 1905-1906. The prosecution alleges that the B Schedule of income put in by Vishnumurti under the Income-tax Act, the Takid issued to the village officers of Gundmi to send a report, the Takid issued to the Potel of Gundmi to communicate to the assessee the order of confirmation of the tax, the deposition of Vishnumurti before the village officers, the deposition of Venkatramana Bhatta (a witness) before them, the list of the houses prepared by the Shanbhog and the report submitted by him to the Tahsildar were all replaced with forged documents in substitution for the original ones, and that an interpolation was made in the deposition of Vishnumurti before the Head Assistant Collector after the confirmation of the tax. Three of the above documents were selected as the subject-matter of the charges against the accused, namely, the deposition of Vishnumurti before the Tahsildar, Exhibit B, the B Schedule put in by him, Exhibit Y, and the interpolation in his statement before the Head Assistant Collector, Exhibit H, Exhibit H-1 being the interpolation. These forgeries are alleged to have been made in the interest of one Nagappa Hande. Nagappa was also charged with forgery before the Committing Magistrate but died after his commitment to the Sessions Court. These two persons, Nagappa Hande and Vishnumurti, financed one Tammaya Urala in 1897 in a partition suit instituted by Tammaya Urala against his undivided co-parceners. Nagappa obtained a mortgage bond from Tammaya Urala and executed a mortgage himself in favour of Vishnumurti on the 24th March 1898. Nagappa alleged that the mortgage debt due to Vishnumurti by him was discharged except a small portion. In 1908 Vishnumurti filed a suit in the District Court of South Canara on the mortgage-deed and produced a copy of it. The suit was transferred to the Sub-Court where it was registered as Original Suit No. 53 of 1909. According to Vishnumurti and the prosecution case here, Nagappa made no payment whatever

towards the mortgage. Nagappa in support of his plea that the major portion of the debt had been paid off produced along with his written statement certain correspondence which he alleged passed between him and Vishnumurti in 1898, 1899, 1904, 1905 and 1906, as well as receipts and acknowledgments for payments made by him. Vishnumurti denounced those documents as forgeries. When Vishnumurti was being cross-examined in the Sub-Court as a witness he was shown certain certified copies of income-tax proceedings relating to him and cross-examined with reference to them. He denounced these also as forgeries. They were not filed in the Sub-Court, though the plaintiff Vishnumurti and the Court called upon Nagappa Hande to produce them. Nagappa applied for copies of these income-tax proceedings in February 1909; these certified copies were the documents used at the cross-examination of Vishnumurti. The first accused is alleged to be the writer of these forged documents. He is a petition writer by profession, the second and third accused were respectively an attender of the Head Assistant Collector's office and the record-keeper of the Udipi Taluk office. They are alleged to have helped Nagappa in obtaining the records of these two offices. The Sessions Judge after a very elaborate enquiry convicted the first accused and acquitted the second and third accused. The first accused has appealed to this Court from his conviction.

Most of the evidence in the case was adduced for proving that the documents in question including those which formed the subjects of the charges against the accused were forgeries. The major portion of the judgment of the learned Sessions Judge is also devoted to the establishment of that proposition. The appellant has not contended before this Court that that finding is wrong. The question we have to decide is whether the prosecution has satisfactorily proved that the appellant was the writer of Exhibits B, Y and H-1. There is no direct evidence on record that the accused was the forger. The conviction is based on the evidence of prosecution witness No. 12, Mr. Charles Hardless, Government Handwriting expert, who was examined to prove that these documents are in the handwriting of the accused, and on certain other evidence which was relied on in corroboration of the evidence of prosecution witness No. 12. It will be convenient to examine the corroborative evidence before proceeding to deal with the evidence of the expert.

SUNDARA AYYAR AND SPENCER, JJ.

In re VENKATA ROW.

The facts alleged to corroborate the expert evidence are these :—

(1) that the accused was on intimate terms with Nagappa and used to write documents for him and others connected with him ;

(2) that the accused visited Nagappa in January 1909 when, according to the prosecution, the forgeries must have been committed ;

(3) that the accused received a considerable sum of money from Nagappa in 1909 and that the latter raised a loan from one Mahabala Rao, prosecution witness No. 37, in January 1909, apparently to be paid to the accused ; and

(4) that the accused was a man who used to forge documents as shown by Exhibit YYYYY discovered at a search of his house, a paper containing the signatures of certain persons in the handwriting of the accused.

[His Lordship in reviewing the facts held that the first fact was proved but that the second, third and fourth facts were not proved and continued] :

The expert compared the handwriting in the documents in question with the writing in exhibits XXXXX, YYYYY, ZZZZZ, CCCCCC and WWWWW. The first question in determining the value of his evidence is whether these documents have been proved to be in the handwriting of the accused. It may be taken as proved, as already stated, that the accused was residing in the house where they were found. The only evidence to prove that they were written by the accused is that given by prosecution witness No. 44. His evidence is most unsatisfactory. He simply says that these documents are in the handwriting of the appellant ; he does not say either in examination-in-chief or in cross-examination how he was acquainted with the appellant's handwriting. A bald statement like the one made by him is not legal evidence of any knowledge of the accused's handwriting. In the course of the re-examination however in answer to questions put by the Court he said : "I came to be acquainted with the first accused's writing only by seeing him write documents ; I think he has written ten or fifteen documents for me." He does not say how many years before he gave evidence he saw the appellant write or how long ago the appellant wrote documents for him. There is perhaps enough in the statement (just referred to) made by him at the

very end of his examination, to make his evidence legally admissible, but it is, to say the least, of the weakest kind. The learned Public Prosecutor drew the attention of the Court to the nature of the documents as probabilising the fact that they are in the accused's writing. Exhibit XXXXX is a note-book containing various scientific and technical English words with their corresponding Canarese equivalents. Exhibit ZZZZZ is a note-book containing entries relating to the construction of some building, but there is nothing in it to show what the building is. Exhibit YYYYY, as already stated, consists of imitation signatures of certain persons. Exhibit CCCCCC is a registered document purporting to be written and attested by the accused, but it is not a document purporting to be 30 years old and requires to be proved like any other document. The question whether the standard writings compared by the expert with disputed ones are properly proved is a matter of great importance when it is sought to prove that the disputed writings are in the handwriting of a particular person, and it was the duty of the prosecution to adduce much more satisfactory evidence to show that the documents given to the expert for comparison were in the handwriting of the appellant.

Assuming that these documents are in the handwriting of the appellant, can the evidence given by Mr. Hardless be taken as sufficient in itself to prove that Exhibits B, Y, and H-1, are in the handwriting of the accused? His reason for the conclusion arrived at by him is as follows: "All these writings (*i.e.*, the standard writings given to him for comparison and the disputed writings) are the handiwork of one and the same person. All these writings are of the wrist movement, with the pen-presentation between 45 and 55 degrees, of even pen-pressure, of regular sizing whether the writings be large or small or wide, of varied direction, of linear and oval sometimes inclining to roundness in style, of ascendant alignment, of even spacing and of well-formed thumb and finger curves." Describing the writing of Vishnumurti he describes it thus "Of the superior finger movement, of a pen-presentation of 35 degrees, of an even medium pen-pressure, of medium sizing, sloping direction, easy execution, close spacing, ascendant alignment, and of ordinary defined finger and thumb curves." It will be observed that with regard to pen-pressure, sizing, alignment and finger and thumb curves, the witness points to no great difference. The differences no doubt are more

SUNDARA AYYAR AND SPENCER, JJ.

In re VENKATA ROW.

prominent in some respects ; in the one case it is wrist movement, in the other case superior finger movement. There is also appreciable difference in the angle of the pen-presentation and in the direction. But can it be said that the resemblances between the accused's writing and the disputed writings in these few respects are sufficient to prove with reasonable certainty that the latter are in the handwriting of the accused ? In cases where a conclusion was based regarding the authorship of a document on a comparison of writing, the expert was generally able to point to marked peculiarities in the ordinary writing of the accused which are reproduced in the forged documents, the accused being unable to avoid them. No peculiarity or mannerism of such sort is spoken to by Mr. Hardless. Daniel Ames in his work on forgery observes : " Where a handwriting is brought into question, it is rare that any one thing can determine the point at issue. It is usually by a more or less extended series of things, the presence or absence of which creates the decisive preponderance of evidence" (page 100). At pages 104 and 105 and in the succeeding pages will be found the manner in which experts in the cases mentioned there were able to bring home to the Court the decided peculiarities which proved the forgery. The learned vakil for the Appellant also drew our attention to the fact that in this case all the standard writings were put together and the disputed ones also put together separately and the expert was asked to compare the writings of the one group with those of the other. I by no means doubt that Mr. Hardless carried out his comparison with perfect *bonâ fide*, but it is unfortunate that the expert knew what the prosecution wished to be proved, and that circumstance must in my opinion detract to some extent from the weight to be attached to the expert's testimony. On reference to KKKKKK it is found that Mr. Hardless before the Committing Magistrate merely deposed that in his opinion the disputed documents were in the handwriting of the accused ; he gave no reasons for his opinion. Again I accept Mr. Hardless' *bonâ fides* as unimpeachable, but the prosecution would have done well to avoid all room for the observation that the witness committed himself at the preliminary enquiry to an opinion given without reasons and then gave reasons for them at the trial before the Sessions Court. He does not say that the handwriting of the accused is in any way peculiar or eccentric, a circumstance which would attach particular weight to evidence of comparison.

I am unable by the application of any facts stated in the expert's evidence as to the writings before the Court to come to the conclusion that exhibits B, Y and H-1, are in the handwriting of the accused. In *Lalta Prasad* v. *Emperor*(1), Pandit SUNDAR LAL, Assistant Judicial Commissioner of Oudh, refused to convict the accused on the uncorroborated evidence of the handwriting expert who happened to be the same as in the present case. The learned Judge found that the corroborative evidence in the case was valueless in that there was no marked peculiarity in the handwriting of the accused or anything rare in its style. The learned Judge quotes the following passage from Dr. Lawson's work on the "Law of expert and opinion evidence":—"The evidence of the genuineness of the signature based upon the comparison of handwriting and of the opinion of experts is entitled to proper consideration and weight. It must be confessed, however, that it is of the lowest order of evidence or of the most unsatisfactory character. We believe that in this opinion experienced laymen unite with the members of the legal profession. Of all kinds of evidence admitted in a Court this is the most unsatisfactory. It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence." This passage possibly states in too depreciatory terms the value of expert evidence. I am quite prepared to concede that there may be cases in which the peculiarities in the handwriting of a person are so numerous and striking and there are so many mannerisms of the forger that he has been unable to avoid in committing his forgery that the Court might well come to the safe conclusion on expert evidence alone that the writing is that of a particular person. But no help of this kind is afforded us in this case by Mr. Hardless. Again, this case must be distinguished from those where several independent experts have arrived at the same conclusion by their independent efforts. Pandit SUNDAR LAL, J., refers to two judgments of the Allahabad High Court *Srikant* v. *King-Emperor*(2) and *Kali Charan Mukerji* v. *King-Emperor*(3). In the former case BLAIR and KNOX, JJ., observe that "to base a conviction upon the evidence of an expert in handwriting is, as a general rule, very unsafe" and in the second case Justices RICHARDS and GRIFFIN approved of the above observation.

(1) (1910) 11 Cr.L.J., 114. (2) 2 All. L.J., 444.
(3) (1909) 6 All. L.J., 184; S.C. (1909) 9 Cr.L.J., 498.

SUNDARA AYYER AND SPENCER, JJ.

In re VENKATA ROW.

In the second case no doubt there were improbabilities arising from the circumstances of the case in the story for the prosecution, but the observations of the learned Judges with regard to the value of expert evidence are none the less valuable. I have no hesitation in the present case in refusing to find the accused guilty on the evidence of prosecution witness No. 12 alone without substantial corroboration. I would therefore reverse the conviction of the accused and direct that he be released from custody.

SPENCER, J.—I agree with my learned brother in thinking that this is not a case in which a conviction can be supported upon the uncorroborated testimony of the handwriting expert; and the corroborative evidence available on the record against the first accused is of the weakest description, and in fact does little more than create a certain amount of suspicion that he may have had a hand in the forgeries.

A number of forged documents are alleged by the prosecution to have come into existence, some in 1900 and some about January 1909.

The Sessions Judge finds traces of a conspiracy to assist the deceased Nagappa Hande in the commission of frauds, and four conspirators are named. None of these four were accused at the trial in the lower Court, no connection has been established between them and the appellant, and nothing has been done to eliminate the possibility that the forgeries which the appellant is charged with committing were perpetrated by one of those persons. The handwriting expert was not so much as asked his opinion as to the authorship of exhibits JJJ to ZZZ of which exhibits JJJ to TTT must have been in existence when the written statement RRRRRR, dated the 16th January 1901, was filed in O.S. No. 45 of 1900.

Amid a mass of alleged forgeries which other persons are alleged to have conspired to forge, the appellant is charged with forging three documents, or parts of documents, one in English and two in Canarese, on the strength of resemblance detected by the expert between these writings and certain so-called genuine writings of the appellant. In paragraphs 26 and 40 of his judgment the learned Sessions Judge refers to exhibit XXXXX series, ZZZZZ series and WWWWW series and exhibit CCCCCC, as being the admitted writings of the first accused. In this Court at

the hearing of the appeal all admission of these documents being in appellant's handwriting is on his behalf repudiated. There is no record of any such admission having been made by him or by any person authorised by him. Neither in his statement in the Sessions Court nor in his statement in the Committing Magistrate's Court was the first accused asked whether any documents were in his writing.

Prosecution witness No. 44 who stated in answer to a question put by the Court that he had seen the first accused write documents, declared that exhibit W series and the Canarese portion of exhibit XXXXX and of exhibit ZZZZZ and the first page of exhibit YYYYY were in his writing, but this witness does not know English and had not seen the first accused write English. Prosecution witness No. 45, who was living in the first accused's house, stated at the search that the writing on some of the papers found at the search was the first accused's but did not clearly specify which those were. At the trial in the Sessions Court he seems to have turned hostile to the prosecution and did not identify any documents to be in the first accused's writing. He further stated that the room where they were found was never occupied by the first accused, but he only took his food there with his sister, the sole occupant. The prosecution is thus left without a satisfactory basis of genuine writings to be used for comparison with what are alleged to be forgeries, and no English writings of the appellant have been proved to be his for the purpose of comparison.

Turning now to the circumstantial evidence against the appellant, there are four matters which suggest a certain amount of suspicion as to his conduct. They are (1) that he was seen in Nagappa Hande's house on two occasions engaged in some writing business and was supplied by Nagappa Hande with food for seven or eight days on the first occasion, (2) that the appellant was spending money on a weaving establishment at a time when Nagappa Hande is proved to have been borrowing, (3) that a letter, exhibit CC, addressed to Nagappa Hande by the appellant asking the former to send him Rs. 50 and suggesting that relations of confidence and dependence that existed between them was found at the search of the house occupied by the appellant's sister, (4) that the appellant was skilled in imitating handwriting and that experiments in copying signatures were found on a scrap of paper (Exhibit YYYYY) at the said search.

SUNDARA AYYAR AND SPENCER, JJ.

In re VENKATA ROW.

[His Lordship here reviewed the evidence on these points and held that if the first was proved it was of no value and that the second, third and fourth were not proved and continued.]

I consider the present case to be one in which it would be dangerous to act on the uncorroborated evidence of the hand-writing expert. The conviction of the first accused must be set aside and his release ordered.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Sadasiva Ayyar.

1912. September 17 and 27.

M. LAKSHMAYYA AND OTHERS (DEFENDANTS), APPELLANTS,

v.

SRI RAJAH VARADARAJA APPAROW BAHADUR AND OTHERS (PLAINTIFFS), RESPONDENTS.*

*Evidence—Private knowledge of facts by Judge, how far may be relied on by him—*Savaram *lands—Meaning of* Savaram*—Madras Estates Land Act (I of* 1908*), sec.* 185*—construction of.*

Where the Judge used knowledge gained by him from his own experience as to scarcity of land for cultivation (although his knowledge was partly derived from facts relating generally to the lands in the zamindari of Nuzvid in which the lands in suit were situated):

Held, that the fact of which he had such knowledge was merely a fact of economical history and that he had not acted illegally in relying upon it.

Per SUNDARA AYYAR, J.—"A Judge is not entitled to rely on specific facts not proved by the evidence in the case but known to him personally or otherwise but he may use his general knowledge and experience in determining the credibility of evidence adduced before him and applying it to the decision of the specific facts in dispute in the case."

Per SADASIVA AYYAR, J.—"I think the only practical rule which can be laid down in these cases is that if a Judge knows of his own knowledge as an individual observer of a past relevant concrete, private incident, and that fact cannot be subjected to ocular proof at the time of trial (such as a person's colour, resemblance of features, appearance, behaviour, chemical experiments on the present condition of the object), and if the truth of such incidents is contested between the parties, he should mention his private knowledge of such incidents to the parties and he should refuse to be the Judge in that case, unless both the parties after he so mentions to them his said personal knowledge of that particular incident, state that they have no objection to his continuing as Judge.

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* Second Appeals Nos. 575 to 579 and 581 to 586 of 1911.