

and that all the necessary ceremonies were performed—*Inderan Valengy Pooly Taver v. Rama Sawmy Pandia Talaver* (1) and Taylor on Evidence, Vol. I, p. 176, fifth edition of 1868.

No doubt, as the lower Appellate Court observes, that the taking of seven steps by the bride is the most material of all the nuptial rites, for the marriage becomes complete and irrevocable on the completion of the seventh step. But we are of opinion that upon the facts found by the Sub-Judge, he ought to have presumed that the seven steps were taken and completed by the bride and that the marriage was a valid one.

We are, therefore, of opinion that there was a marriage as provided by Hindu law between the plaintiff and the minor Juggat Lakhi, and that the plaintiff is entitled to the restitution of conjugal rights as prayed for.

We accordingly direct that the decrees of both the lower Courts be set aside, and the appeal be decreed, but under the circumstances of the case we are of opinion that each party should bear his own costs in all the Courts.

*Appeal allowed.*

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### PRIVY COUNCIL.

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SRI KISHEN AND OTHERS (DEFENDANTS) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (PLAINTIFF.)

P. C.\*  
1885.  
June 16,  
17, 18.

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[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Guarantee, Contract of—Construction of contract guaranteeing conduct of person employed as agent of the guarantor—Liability for loss resulting from such agent's misconduct towards his employer.*

Upon the construction of an agreement guaranteeing an employer against loss by the misconduct of a person employed as agent of the guarantor, *Held*, that the loss, to be recoverable in a suit against the guarantor, must be shown to have arisen from misconduct on the part of the agent in connection with the business of the agency, and to be within the scope of the agreement. The khezanchi of a District Treasury guaranteed the Government against loss arising from the misconduct of the stamp darogah,

\* *Present*: SIR B PRACOCK, SIR R. P. COLLIER, SIR R. COUGH, AND SIR A. HOBHOUSE.

(1) 13 Moore's I. A., 141; 3 B. L. R., P. C., 1.

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appointed as his agent. The latter became a party to frauds by putting off upon the public forged stamps, in addition to the genuine ones issued from the Treasury, into which, however, all the proceeds of sales were paid. The darogah, on whose indent the stamps were issued, made the proceeds appear to correspond in his accounts with the value of the stamps issued to him; but, under cover of the above payment, he misappropriated certain genuine stamps.

*Held*, that although the guarantor might not be responsible in respect of the forgery of the stamps, yet he was responsible on his agreement by reason of the misappropriation of the genuine stamps, and the false accounts rendered; and that losses, which in the first instance were caused by the forgery, were brought within the scope of the agreement by the fact of such misappropriation and false accounting.

APPEAL from a decree (2nd May 1883) of the Judicial Commissioner of Oudh, modifying a decree (29th May 1882) of the District Judge of Lucknow.

The suit out of which this appeal arose was brought by the Deputy Commissioner of Lucknow, representing the Government, against Mohun Lal, Khezanchi of the Lucknow District Treasury, and father of the present appellants, who were represented by Sri Kishen, their next friend, Mohun Lal having died pending this appeal.

The liability of Thakur Baldeo Baksh, joined as a defendant, did not come into question in this appeal, which related to the effect of an agreement entered into by Mohun Lal on 11th June 1869, as follows:—

“Whereas I, Mohun Lal, have been appointed Sadar Treasurer in the District of Lucknow. I hereby acknowledge my responsibility for all public moneys, notes, deposits, stamp paper, postage labels, and other property of Government, committed to my charge, or to that of agents appointed by me, or on my nomination, whether at the Sadar or Mofussil Offices of the district; and I hereby engage to keep safely, and to render true account of the same, in due conformity to official rules.

“II. I further engage to be responsible for my substitute, appointed, with my consent, during my temporary absence at any time, should any loss or deficiency arise from non-production of accounts, or by misconduct or negligence of myself, of my temporary substitute, or of agents appointed by me, or on my nomination, as above mentioned; and whether such loss

or deficiency relate to the public moneys, notes, deposits, stamp paper, postage labels or other property of Government, committed to the charge of myself, my substitute or agents, as aforesaid, I hold myself responsible to make good such loss or deficiency myself, or through my sureties, without delay or any pretext whatever."

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In 1879, Hingun Lal, who had been appointed stamp darogah in the Lucknow Treasury on the nomination of Mohun Lal, was with others convicted by the Sessions Court of Lucknow under ss. 255, 258, and 109 of the Indian Penal Code. By a fraud, to which the stamp darogah and the licensed stamp vendors were parties, forged stamps, in addition to the genuine stamps issued from the Treasury, were supplied to the public. The proceeds were paid in full direct into the Treasury by the stamp vendors.

The mode in which the stamp darogah acquired wrongful gain was stated in the sixth paragraph of the plaint (referred to in their Lordships' judgment), as follows: Hingun Lal, having the means of ascertaining how much of this payment in full was the proceeds of forged stamps from the stock of genuine stamps passing through his hands, the issue being made upon his indent, misappropriated stamps of various values, but, in the aggregate, corresponding to the exact amount realized by the sale of forged stamps, disposing of them to his own profit. And the claim made was in the alternative, for an account of the sale proceeds of the stamps issued to the stamp darogah, or in default of that being rendered, for Rs. 18,100 due on the 11th June 1869, being the value of one hundred and forty Court-fee stamps of Rs. 100 each, and of general stamps to the value of Rs. 4,100, traced as misappropriated in the above manner.

At the hearing before the District Judge it appeared that the payments made directly to the Treasury by the stamp vendors concealed this misappropriation, and in some instances the darogah had exchanged forged stamps of higher values for a corresponding number of genuine stamps of lower values. Also, in his monthly accounts, he had made the payments into the Treasury by the stamp vendors exactly equal the value of the stamps issued by the Treasury to him, excepting those that remained unsold,

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The District Judge found that the accounts gave details of stamps of an aggregate value with that of those issued, and that a sum equal to that aggregate value was paid in. This amount in reality represented a greater number of stamps than had actually been issued, but gave cover to the misappropriation of genuine stamps sufficient to make the amount even. A decree was made for Rs. 11,700.

On appeal, the Judicial Commissioner maintained the above judgment, but on a cross appeal, raised the amount to Rs. 18,100, showing that the evidence supported the claim to the full amount, for which he accordingly gave a decree.

Mohun Lal appealed, and a cross appeal, as to interest and costs, was filed.

For the appellant Mohun Lal, Mr. *J. G. W. Sykes* argued that the stamp darogah was not his agent within the meaning of the agreement of 11th June 1869, referring to changes in the establishment of the Treasury Office in 1873. Mohun Lal was only responsible for the value of stamps committed to the care of the stamp darogah, and this had been made good to the Treasury.

True it was that this had been done with money, the proceeds of counterfeit stamps; but the latter at the time when sold were the property of the stamp vendors; and the Treasury having accepted the payments as made, and the accounts rendered, the accounts, for all purposes regarding the liability of Mohun Lal, must be considered as closed. Nor could Mohun Lal be held responsible for the criminal act of the stamp darogah. Abetment of forgery was not within the agreement, nor connected with the business of the agency, assuming the agency to exist. It was a misconstruction of the agreement of the 11th June 1869 to regard it as an agreement by Mohun Lal to protect the Government against loss to the general stamp revenue. It was only an agreement to answer to the Lucknow Treasury Officers for the property committed to the charge of agents appointed by him. Again, no loss had been shown to have arisen from any non-production of accounts.

For the respondent, the Secretary of State for India in Council, Mr. *J. D. Mayne* and Mr. *C. C. Macrae* were called

upon in reference to the question whether the loss to the respondent had been rightly attributed to the misappropriation, and thus connected with the acts of the stamp darogah in the course of his employment. They argued that no true accounts had been rendered as they would have shown the misappropriation of the stamps. It could not be insisted that the treasury should credit, against the debit of the value of genuine stamps misappropriated, sums received in consequence of the sale of counterfeit stamps. Such sums had been paid by the stamp vendors, but they could not have been considered assets as between the Government of India and the Lucknow Treasury, if accounts had been taken between them. No agent could take credit in accounts between him and his principal for proceeds obtained, as some of this money had been obtained, by the stamp vendors. There was thus an actual loss, sufficiently connected with the acts of the stamp darogah, by the misappropriation and the false accounts. As to the latter, it could not be doubted that they were false within the meaning of the agreement, when it was considered what would have been the effect of a true account.

Reference was made to Story on Agency, paras. 231-234; and *The Guardians of Mansfield Union v. Wright* (1).

Their Lordships' judgment was delivered by

SIR A. HOBHOUSE.—The basis of this suit is an agreement which was entered into on the 11th June 1869 between Mohun Lal and the Government of India—the Secretary of State in Council represents the Government—on the occasion of Mohun Lal being appointed Sadar Treasurer in the district of Lucknow. The material words on which the claim is founded are these: “Should any loss or deficiency arise from non-production of accounts, or by misconduct, or negligence of myself, of my temporary substitute, or of agents appointed by me, or on my nomination.” Then;—“I hold myself responsible to make good such loss.” What has happened is this. There have been extensive forgeries of stamps by subordinate officers of the Treasury of Lucknow. Against Mohun Lal himself there is no charge; he is perfectly innocent. But it is sought to make him liable by reason of the misconduct of his subordinates, and particularly

(1) L. R., Q. B. D., 683.

1886 of Hingun Lal, who was first the accountant, and then the  
 SRI KISHEN darogah of stamps in the Treasury of Lucknow. The course  
 of proceeding by those who committed the forgeries seems to  
 have been as follows: Hingun Lal received out of the Treasury  
 stamps for sale, according as he indented upon the Treasury for  
 them. He did not sell them himself, or ought not to have sold  
 them himself, direct to the purchasers, but distributed them to  
 certain persons who were licensed vendors of stamps, who dealt  
 directly with the public, received the money from the public, and  
 whose duty it was to pay that money over to the Treasury. In  
 some cases it appears that the purchasers paid direct to the  
 Treasury, but either from the purchasers or from the vendors the  
 Treasury ought to get the whole value of the stamps issued by  
 it to Hingun Lal. It seems that there were daily accounts stated  
 between the Treasury and the vendors, but between the Treasury  
 and Hingun Lal the accounts were stated monthly, and of course  
 at the end of every month it was necessary to show that the money  
 received by the Treasury was the exact value of the stamps  
 which had been issued, excepting such as were not then sold and  
 were accounted for as not sold. Hingun Lal colluded with the  
 licensed vendors. They caused stamps to be forged either by  
 making entirely new ones, or by altering some genuine stamps to  
 larger amounts. The vendors sold those forged stamps, and they  
 paid the whole of the proceeds into the Treasury. Then Hingun  
 Lal, having got real stamps from the Treasury, took for himself  
 and his accomplices so many as were exactly equivalent to the  
 payments made into the Treasury. He accounted every month,  
 so adjusting his accounts as to make the proceeds paid into the  
 Treasury for the forged stamps by the licensed vendors exactly  
 square with the value of the stamps issued by the Treasury to  
 him, excepting so far as the same remained unsold. This seems  
 a very curious and circuitous method of committing a crime, and  
 it is not clear to their Lordships why it was followed—probably  
 because they are not familiar with the working of the Treasury;  
 but the Courts below, who are familiar with these local matters,  
 are of opinion that, without that circuitous process, it was impos-  
 sible that the fraud could have remained for any length of time  
 undetected. In point of fact it went on for several years, certainly

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for five years, but the exact period of time is not material. Then it was discovered, and the forgers were convicted and punished.

Now a claim is brought against Mohun Lal which is stated in the sixth paragraph of the plaint, on the two grounds of the misappropriation of the stamps by Hingun Lal, and of the misconduct of Hingun Lal by falsifying his accounts and so causing loss to the Government. The plaint states that the stamps misappropriated by Hingun Lal amounted in value to Rs. 18,100 or more.

In order to recover upon that agreement the plaintiff must show that there is a loss or deficiency arising by the misconduct of an agent appointed by Mohun Lal, or on his nomination.

Upon that issue several defences are offered. First it is said that Hingun Lal was not the agent of Mohun Lal. Hingun Lal was employed in the Treasury from the year 1859 onwards, and it is admitted on the part of the appellant that up to the year 1873 Hingun Lal was the agent of Mohun Lal: he was appointed by him, was paid by him, and, it may be assumed, was dismissible by him. But in the year 1873 the Government appointed Hingun Lal to a definite office, that of accountant in the Treasury, and instead of Mohun Lal paying him, thenceforward the Government paid him. It is contended that the change so altered Hingun Lal's position, that it made him the agent of the Government instead of the agent of Mohun Lal. The question is not of agency generally, but whether Hingun Lal was an agent within the purview of this agreement? Both Courts below have found that he was, and as far as regards the issue whether Mohun Lal nominated Hingun Lal, their finding ought to be taken as conclusive under the usual rule, that being a pure matter of fact. Whether Hingun Lal was agent within the purview of this agreement is a matter of law. Their Lordships are of opinion that the Courts below have come to a right conclusion upon the evidence, and that, although it is not proved beyond possibility of doubt, it is sufficiently proved, in the first place, that Mohun Lal nominated him, and, in the second place, that the change which took place was not such as practically to alter the relations between Mohun Lal and Hingun Lal, considering them as principal and

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subordinate. In point of fact there is reason to believe from Mohun Lal's own letter which he wrote on the occasion, that no such alteration could have been in his contemplation. It was he who applied for the change, and he applied for it on the ground that his work had increased, and his security was onerous to him, and he begged that he might be relieved from the payment of the staff, including Hingun Lal, and also that his salary might be increased so as, he says, to be up to the standard of the security filed by him. The salary was increased, and, as he made no further application, we may fairly assume that he considered it adequate to the security that he gave.

Taking Hingun Lal to be the agent of Mohun Lal within this agreement, has there been misconduct on his part within the agreement? Of course there has been the very grossest and most glaring misconduct, because he has committed forgery, but the suit is not founded on the forgery, and probably no suit could be founded on the forgery, because the misconduct contemplated by this agreement must be some misconduct connected with the business of the agency, and forgery is in no way connected with the business of the agency. For instance, if Hingun Lal, after receiving the stamps issued out of the Treasury to him, had absconded with them that afternoon, that would have been misconduct chiefly connected with his business as agent of Mohun Lal, and such a case would have fallen within the agreement.

There is no doubt that on this part of the case a good deal of difficulty has been introduced from the circumstance that what may be called the root of the misconduct was the forgery, which would not directly afford ground for suit. But in two respects there is misconduct which is directly connected with the agency of Hingun Lal, that is to say, the misappropriation of the stamps which he represented to have been sold, and the false accounts which he rendered month by month, and in which he represented those stamps to have been sold by the vendors.

Then comes the question whether, there being misconduct within the meaning of the agreement, the loss or deficiency has arisen in consequence of that misconduct? As respects the misappropriation there is, no doubt, the difficulty that has just been mentioned of the forgery being calculated to cause loss in



the first instance, and of its being necessary to disentangle the two things. It seems to have been very much argued in the Court below, and the point has been mooted here, not by the appellant's counsel, but by this Board, and very carefully and ably argued at the Bar by the respondent's counsel, whether it was possible to attribute the loss to misappropriation of the stamps, and after much doubt their Lordships are of opinion that the Courts below have rightly connected the loss with the misappropriation; that, supposing the accounts to be now taken between the Government on the one side, and the Treasurer of Lucknow on the other side, the Treasurer cannot claim to be allowed in account those moneys which were produced by the forged stamps, and which were used by Hingun Lal to cover his conversion to his own use of the genuine stamps that were issued to him.

The case on that point is strengthened very much by the false accounts. Hingun Lal represented in his monthly accounts that the whole of the genuine stamps which he represented as sold had been sold by the licensed vendors. In point of fact either they never were sold by the licensed vendors, or they had not at that time been sold, and if his accounts had told the truth upon those points, then the forgery must have been discovered at once, and it is impossible that during a series of years the Government could have lost the money that it did lose by the forgeries.

That being so, the only other question is as to the amount to be recovered, and on that point there is a difference between the two Courts. With respect to the sum of Rs. 11,700 the two Courts agree. But there is a further sum, making in the whole Rs. 18,100, the amount claimed, which the Judicial Commissioner has allowed, so far varying the decree of the Court below.

It is not necessary now to go into the evidence upon that point, because it is clearly shown in the judgment of the Judicial Commissioner that the reason for the District Judge giving judgment only for the lesser amount was that he made a slip in construing the evidence. He had thought that there was a contradiction in the evidence, because one passage of it shows the larger amount of stamps allowed by the Judicial Commissioner to have been sold, while in another a lesser amount is stated. There is, however, no contradiction, because the two

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statements refer to two different periods of time, and the claim made in this suit embraces the longer period. Therefore the Judicial Commissioner was perfectly right in allowing the larger amount.

That being so, their Lordships are of opinion that the appeal of Mohun Lal should be dismissed with costs.

With respect to the cross appeal their Lordships think that the decree ought not to be varied in respect of the costs before the Judicial Commissioner, and that the cross appeal should be dismissed with costs.

Their Lordships will humbly advise Her Majesty in accordance with that opinion.

*Appeals dismissed.*

Solicitor for the appellants: Mr. *William Buttle*.

Solicitor for the respondent: Mr. *H. Treasure*.

## APPELLATE CIVIL.

*Before Mr. Justice Tottenham and Mr. Justice Agnew.*

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 August 5,

NARAIN PATRO (PLAINTIFF) v. AUKHOY NARAIN MANNA AND OTHERS (DEFENDANTS).\*

*Specific performance—Contract—Agreement to sell land by guardian of minor contingent upon the permission of the Court—Specific Relief Act, (I of 1877), s. 26.*

A certificated guardian of certain minors entered into an agreement with the plaintiff to sell certain land belonging to them for a fixed price contingent upon the leave of the Court, which was necessary, being obtained to the transaction, and a portion of the purchase money was paid by the plaintiff. The Court sanctioned the sale but at a higher price than that agreed on between the plaintiff and the guardian, and the latter sold to a third party. The plaintiff, thereupon, sued the minors by their guardian as next friend and the third party for specific performance of the agreement to sell to him at the price mentioned in the agreement.

*Held*, that the contract was not one which could be specifically enforced, and that s. 26 of the Specific Relief Act did not apply. The contract as it stood was never a complete contract at any time as it was contingent upon the

\* Appeal from Appellate Decree No. 377 of 1885, against the decree of H. Gillon, Esq., Officiating District Judge of Midnapore, dated the 29th January 1885, affirming the decree of Baboo Nilalohit Mukherji, Additional Munsiff of Nermal, dated the 20th of May 1884.