1895

RAM GHULAM SINGH v. RAM BEHARI SINGH.

Gauri Singh had separated, the presumption to which we have referred would apply, and that presumption in this case would have been that at the commencement of this suit the descendants of Gauri Singh were still members of a joint family. It is, however, common ground, not on the pleadings, but on the evidence produced by both sides, that the descendants of Gauri Singh had separated prior to the commencement of this suit. For the plaintiffs it is contended that we should presume that the family remained joint until after the death of Paljhan Singh, even if we did not believe the evidence given on behalf of the plaintiffs to prove that the separation which took place was after the death of Paljhan Singh. In our opinion, the plaintiffs having, by their own evidence, destroyed the presumption that this family was, at the commencement of the suit, a joint family, it lies upon the plaintiffs to prove a separation at such a period in the family history as would entitle the plaintiffs to the relief which they sought, and they are in the same position under the circumstances of this case as would be any other plaintiff who sought to dispossess a defendant in possession of property, *i.e.*, the plaintiffs have to prove their case. This view appears to us to be consistent with the principle of the decision of the Calcutta High Court in *Obhoy Churn Ghose* v. *Gobind Chunder Dey*. (1).

[The remainder of the judgment is occupied entirely with a discussion of the evidence in the case, and is therefore not reported. —ED.]

1895

November 21.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkitt.

DWARKA DAS AND ANOTHER (DEFENDANTS) *v.* SANT BAKHSH AND OTHERS (PLAINTIFFS).

Act No. 1 *of* 1882 (*Indian Evidence Act*) *section* 34—*Account-books—Corroborative evidence necessary to render defendant liable upon entries in plaintiffs' books.*

In a suit to recover money due upon a running account the plaintiff produced his account-books, which were found to be books regularly kept in the course of business in support of his claim One of the plaintiffs gave evidence as to the entries in the account-books, but in such a manner that it was not clear whether he spoke from his personal knowledge of the transactions entered in the books, the entries in which were largely in his own handwriting, or simply as one describing

---

First Appeal No. 75 of 1894, from a decree of G. Forbes, Esq., Officiating r ict Judge of Jaunpur, dated the 2nd February 1894.

(1) I. L. R., 9 Calc. 237, at p. 243.

the state of affairs that was shown by the books. He was cross-examined, but no questions were asked him to show that he was not speaking as to his personal knowledge. *Held* that the evidence given as above should be interpreted in the manner most favorable to the plaintiff and might be accepted in support of the entries in the plaintiffs' account-books, which by themselves would not have been sufficient to charge the defendants with liability.

THE facts of this case sufficiently appear from the judgment of the Court.

This was a suit brought by a firm of merchants of Sháhganj in the Jaunpur district against another firm of the same place to recover some Rs. 872 alleged to be due upon a balance of account in respect of moneys lent by the plaintiffs to the defendants.

The principal defendants, Dwarka Das and Bhooleshar, denied the plaintiffs' claim *in toto*. They alleged in their written statement that they had never borrowed money from the plaintiffs and that the plaintiffs' books by the aid of which the claim was sought to be proved were forgeries. There were other persons impleaded as defendants, but one of these died during the pendency of the suit; and as to the others it was found that their connection with the firm of Dwarka Das and Bhooleshar was not proved.

The plaintiffs' case was supported mainly by their own account-books, which were found to have been regularly kept in the course of business. The various items, however, composing the total sum claimed by the plaintiffs were not specifically proved; but the court of first instance (District Judge of Jaunpur) held that the books being generally in proper form and none of the items being suspicious, and the defendants having denied the claim as a whole and not merely taken exception to some items whilst admitting others, there was sufficient proof of the correctness of the plaintiffs' claim. The Court accordingly gave a decree in favour of the plaintiffs.

The defendants appealed to the High Court, on the ground mainly that the accounts relied upon had not been proved, and that it was under the circumstances for the plaintiffs to establish by evidence each item of the account.

Pandit *Sundar Lal* and Munshi *Madho Prasad*, for the appellants.

Mr. *J. Simeon* and Maulvi *Ghulam Mujtaba* for the respondents.

1895

DWARKA DAS v. SANT BAKHSH.

EDGE, C. J., and BURKITT, J.—The plaintiffs, who are respondents in this appeal, brought their suit to recover moneys alleged to be due by the defendants to the plaintiff's firm. They were moneys alleged to have been advanced to the defendants upon different dates and over a series of years. The District Judge found in favor of the plaintiffs in respect of all the amounts claimed which were not barred by limitation. He found that the plaintiffs had proved so much of their case as was not barred by limitation by putting in evidence their account-books, and he disbelieved all the corroborative evidence of the loans which was called, with the exception to some extent of the evidence given by the witness Balbhaddar. The District Judge found that the books were regularly kept, and he assumed in point of law that an account-book which was proved to have been regularly kept was *prima facie* evidence as against the opposite party of the matters stated in it. He relied upon section 34 of Act No. I of 1872 (The Indian Evidence Act). The interpretation put by him upon section 34 is, in our opinion, erroneous. Section 34 applies only to entries in books of account which are regularly kept in the course of business, and the District Judge's view of the evidence which he believed was that the books of the plaintiff's firm were regularly kept in the course of business. No doubt the entries in question were entries, on the Judge's finding, to which section 34 of the Evidence Act applies; but section 34 of the Evidence Act only makes entries in books of account regularly kept in the course of business relevant, when they refer to a matter into which the Court has to enquire, and what the Judge apparently overlooked was that section 34 expressly enacts:—"but such statements shall not alone be sufficient evidence to charge any person with liability." On the findings of fact of the Judge he ought, in our opinion, to have dismissed the suit. The entries alone were not sufficient evidence under the Act to charge the defendants with liability, and the District Judge did not believe the oral evidence as to the loans having been made.

Mr. *Simeon*, who has appeared here for the plaintiffs-respondents has referred us to section 4 of Act No. XVIII of 1891. That section does not help us. Even if it applied, which it does

not, to the books of the plaintiff's firm, it would not give the extracts from those books any greater force as a matter of evidence than the books themselves would have had.

We have to see whether the plaintiffs did in fact make out a case for their decree. We agree with the District Judge as to the oral evidence of the advances, with the exception of that of Balbhaddar. In our opinion Balbhaddar's evidence was true, and it did make out a *primâ facie* case with regard to some of the transactions in question. However, that would not be sufficient to support the decree in full. One of the plaintiffs, Ajudhia, was called, and, on looking at the *bahi* (account-book) he stated the amounts which were advanced to the defendants and the amounts of the repayments. He says also that some of the entries were in the writing of Sheo Tahal and some had been made by himself; further, that the credit and debit entries of certain of the items had been made at the request of the defendants. His evidence in chief is consistent with its being evidence given by a man as to transactions of which he had personal knowledge, upon refreshing his memory by looking at accounts which were entered up either by himself personally or under his personal supervision, and it is also consistent with the case of a man who had no personal knowledge of the transactions entered in the account-books beyond the fact that there were entries in the account-books, some made by himself and some by another man, and those entries showed certain results. Ajudhia was somewhat loosely examined. It was, in our opinion, the duty of the pleader for the defendants, if he wanted to put an adverse interpretation on Ajudhia's evidence or wished to have it excluded from consideration, to have objected at the time and cross-examined Ajudhia as to whether the transactions of which he was speaking were within his own personal knowledge, or whether his evidence was solely based on the entries which he found in the account-books. Ajudhia was cross-examined at length. No question suggesting that he was not speaking from his own personal knowledge was put to him, and no objection was taken at the time to the questions put to him, on the plaintiff's behalf, or to his answers. Consequently, in our opinion, Ajudhia's evidence should receive the

1895

DWARKA DAS v. SANT BAKHSH.

favorable construction which would entitle us to treat it as substantive evidence in this case, and not to exclude it as evidence which was inadmissible. There is no reason to suppose that Ajudhia was speaking falsely. He is corroborated by Balbhaddar, and he is corroborated also by the entries in the books of his firm, which are relevant, those books having been properly kept in the ordinary course of business.

We do not believe the evidence for the defendants.

We dismiss this appeal with costs. The plaintiffs have filed objections. They objected to the view which the Judge took of the truthfulness of some of their witnesses. That did not form a ground of objection under section 561 of the Code of Civil Procedure, as it did not go to any part of the case upon which they had not succeeded. The other ground of objection which was filed, was as to the disallowance of their costs in the Court below. We will not interfere with the discretion of the District Judge. The plaintiffs came into Court with apparently a true case, but determined to back that true case up by perjured evidence. In this Court their perjured evidence very nearly induced us to discredit their whole case. We disallow the objections with costs.

Appeal dismissed.

1895
November 26.

REVISIONAL CRIMINAL.

Before Mr. Justice Aikman.

QUEEN-EMPRESS *v.* PUNNA AND ANOTHER.

Criminal Procedure Code, s. 560—*Order for imprisonment in default of payment of compensation.*

Although compensation awarded under section 560 of the Code of Criminal Procedure is recoverable as if it were a fine, it is not competent to a Magistrate immediately upon ordering a complainant to pay compensation to direct that he should in default be sentenced to imprisonment.

THIS was a reference under section 438 of the Code of Criminal Procedure made by the Officiating Sessions Judge of Mainpuri. The facts of the case sufficiently appear from the judgment of Aikman, J.