

PRIVY COUNCIL.

BHAGWAN SINGH (DEFENDANT) v. ALLAHABAD BANK,
LIMITED (PLAINTIFF)* (AND CONNECTED APPEALS).

J. C.*
1926
July, 23.

[*On Appeal from the High Court at Allahabad.*]

Privy Council practice—Concurrent findings—Finding on oral evidence—Affirmance on documentary evidence.

The Judicial Committee will not interfere with concurrent findings of fact unless very definite and explicit grounds for interference are assigned. The circumstance that the trial Judge based his finding on oral evidence while the appellate court's was based on documents is not a ground for interference.

Ram Anugra Narain Singh v. Chowdhry Hanuman Sahai (1), followed.

Judgement of the High Court affirmed.

Consolidated appeals (Nos. 34, 35, 36 of 1925) from a decree of the High Court (January 28, 1920) which substantially affirmed a decree of the Subordinate Judge of Agra, and from two decrees of the High Court (March 13, 1916) which respectively revised and varied decrees of the Subordinate Judge. The suits giving rise to the consolidated appeals related to the liability of the appellant in respect of certain bills of exchange either drawn or accepted by one Babu Lal. The judgement states the facts sufficiently for this report, which is in respect only of the statement of the rule as to concurrent findings, after a reference in argument to previous decisions of the Board.

1926. May 11, 13. *Sir George Lowndes, K. C.*, and *Kenworthy Brown* for the appellant. The findings that Babu Lal had authority to draw and accept bills of exchange do not come within the rule of the Board as to concurrent findings, since the

* *Present* :—Viscount DUNEDIN, Lord ATKINSON and Mr. AMEER ALI.
(1) (1902) I.L.R., 30 Calc., 303, L.R., 30 I.A., 41.

1926

BHAGWAN
SINGH
v.
ALLAHABAD
BANK,
LIMITED.

trial Judge arrived at his finding on the oral evidence, whereas the appellate court rested its finding upon the effect of the letters: Reference was made to *Rungama v. Atchama* (1), *Mudhoo Soodun Sundial v. Suroop Chunder Sirkar* (2), *Tayammaul v. Sasachalla Naiker* (3), *Tareeny Churn Bonnerjee v. Maitland* (4), *Valoo Chetty v. Sooryah Chetty* (5), *Venkateswara Iyan v. Shekhari Varma* (6), *Thakur Harihar Bakhsh v. Thakur Uman Parshad* (7), *Ram Lal v. Mehdi Husein* (8), *Umrao Begum v. Irshad Husain* (9), *Moung Tha Hnyeen v. Moung Pan Nyo* (10), *Ram Anugra Narain v. Chowdhry Hanuman Sahai* (11), *Sanwal Singh v. Satrupa Kunwar* (12), *Sajjad Husain v. Wazir Ali Khan* (13), *Mati Lal Das v. Eastern Mortgage and Agency Co.* (14).

Dunne, K. C., Wallach and Dube for the respondents, were called on only to point to any evidence on the record that Babu Lal had authority, which they did.

July, 23. The judgement of their Lordships was delivered by Viscount DUNEDIN:—These three cases all turn on the same point of fact. The appellant, Thakur Bhagwan Singh, had a place of business in Agra, and he occasionally resided there. When he was not there one Babu Lal carried on business for him. In all these suits he is sued on bills which are either drawn or accepted by Babu Lal, and the whole point turns on Babu Lal's authority so to

- (1) (1846) 4 Moo. I.A., 1, 111. (2) (1849) 4 Moo. I.A., 431.
 (3) (1865) 10 Moo. I.A., 429 (436). (4) (1867) 11 Moo. I.A., 317 (339).
 (5) (1877) I.L.R., 1 Mad., 252; L. R. 4 I.A., 109. (6) (1881) I.L.R., 3 Mad., 384; L. R., 8 I.A., 143.
 (7) (1886) I.L.R., 14 Calc., 296; L. R., 14 I.A., 7 (15). (8) (1890) I.L.R., 17 Calc., 882; L. R., 17 I.A., 70.
 (9) (1894) I.L.R., 21 Calc., 997; L. R., 21 I.A., 163. (10) (1900) I.L.R., 28 Calc., 1; L. R., 27 I.A., 166.
 (11) (1902) I.L.R., 30 Calc., 303; L. R., 30 I.A., 41. (12) (1905) I.L.R., 28 All., 215; L. R., 23 I.A., 53.
 (13) (1912) I.L.R., 34 All., 455; L. R., 39 I.A., 156. (14) (1920) I.L.R., 47 I. A., 265, 274.

do. It was agreed that the evidence in each of the three cases should be available in the others.

The appellant denied all knowledge of the bills and of the authority. Both courts found that he was absolutely untrustworthy, and that his statements were worth nothing. Now in the Appeals Nos. 34 and 36, there are concurrent findings of the learned Subordinate Judge and the High Court that Babu Lal had authority to sign the bills, and they, therefore, come under the general rule observed by this Board as to concurrent findings, which is that they will not interfere unless very definite and explicit grounds for that interference are assigned—*See per Lord HOBHOUSE in Mowng Tha Hnyeen v. Mowng Pan Nyo* (1).

But the only definite ground alleged here is that the Subordinate Judge went principally on oral evidence, while the High Court went on the effect of certain letters; that is no ground.

In *Ram Anugra Narain Singh v. Chowdhry Hanuman Sahai* (2) this Board said this:—

“The appellant’s counsel, however, contended that this finding was not within the rule, because the courts were not quite agreed on the grounds of their decision—the Subordinate Judge relying on the oral testimony, whilst the High Court based its finding on the documentary evidence. But the rule is none the less applicable because the courts may not have taken precisely the same view of the weight to be attached to each particular item of evidence.”

In Appeal No. 35 there were concurrent findings as to five bills which the appellants alleged to be forgeries, but as regards four bills the learned Subordinate Judge held that there was a special agreement

1926

BHAGWAN
SINGH
v.
ALLAHABAD
BANK,
LIMITED.

(1) (1900) I.L.R., 28 Cal., 1; L. R., 27 I.A., 166.

(2) (1902) I.L.R., 30 Cal., 303, 308; L.R., 30 I.A., 41, 43.

1926
 BHAGWAN
 SINGH
 v.
 ALLAHABAD
 BANK,
 LIMITED.

which entitled Babu Lal to sign only when the appellant was absent. The learned Judges of the Court of Appeal finding on the letters and the circumstances proved in all the cases, came to the conclusion that Babu Lal had full authority to sign. Their Lordships see no reason for differing from that opinion. They will, therefore, humbly advise His Majesty to dismiss all three appeals with costs.

Solicitor for appellant: *Douglas Grant.*

Solicitor for respondent: *H. S. L. Polak.*

APPELLATE CIVIL.

*Before Sir Grimwood Mears, Knight, Chief Justice, and
 Mr. Justice Sulaiman.*

1926
 April, 29.
 June, 2.

BINDRABAN ALIAS BALMAKUND (PLAINTIFF) v. THE
 GREAT INDIAN PENINSULA RAILWAY COM-
 PANY (DEFENDANT).*

*Act No. IX of 1890 (Indian Railways Act), section 72—
 Contract for carriage of goods—Risk-note form "B"—
 Construction of document—"Robbery from a running
 train"—Wilful neglect—Liability of railway company.*

A railway company who accepts goods for carriage in accordance with risk-note form "B" cannot successfully plead that there was a robbery from a running train merely by giving proof of the fact that the goods were on the train at one particular station in a sealed van and subsequently at a later station were missing from the van, the evidence of a theft being provided by the fact that the seals were broken.

Held (by a majority of 3 to 2 of the Judges constituting a Full Bench), that the word "robbery" as used in risk-note form "B" bears the same construction as in the Indian Penal Code, or at any rate means something more than simple theft.

* Second Appeal No. 927 of 1923, from a decree of J. R. W. Bennett, District Judge of Farrukhabad, at Fatehgarh, dated the 5th of April, 1923, reversing a decree of Gauri Prasad, Subordinate Judge of Farrukhabad, at Fatehgarh, dated the 10th of May, 1922.