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it on, are not in themselves opposed to public policy; but such documents should be jealously scanned, and when found to be extortionate and unconscionable, they are inequitable as against the party against whom relief is sought, and effect should not be given to them. The plaintiff in this suit was a money-lender, and was dealing with illiterate persons; he must have represented to them the likelihood and the necessity of extensive litigation, a representation unwarranted by the facts; further, the fee paid to the vakil, Bansi Lal, was most excessive, and disproportionate to any work likely to be done by him.

No evidence was given that the assertion made in the agreement of the 3rd of November, to the effect that to recover possession for the defendants would require large sums of money, was true, or that the plaintiff had any ground for believing it to be true. In fact, the proceedings were brief and simple. The widow died on the 27th September 1882; the zemindars' claims were rejected on the 8th of December; the controversy between the widow's heirs and her husband's was settled by agreement before the 3rd of November, and the parties were put into possession in December. In such circumstances their Lordships concur with the view of the transaction taken by the District Judge and the Judicial Commissioner. Their Lordships will therefore humbly advise Her Majesty that the appeal be dismissed.

Appeal dismissed.

Solicitors for the appellants:—Messrs. *Young, Jackson,* and *Beard.*

C. B.

NILMONI SINGH DEO BAHADUR (PLAINTIFF) *v.* KIRTI CHUNDER CHOWDHRY, (DEFENDANT.)

[On appeal from the High Court at Calcutta.]

P.C. 1893. *March* 15 *and* 16 *April* 28.

Onus Probandi—Concurrent findings of fact—Evidence as to liability to account—Inferences of fact—Concurrent findings by two Courts below, not influenced by precisely the same considerations, upon the same evidence.

In 1884 a deed of release exonerating an agent from liability to account was executed by his principal, stating that there had been a settlement

* *Present:*—LORD WATSON, LORD MORRIS and SIR R. COUCH.

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between them. In 1885 the agent signed an *ikrarnama* addressed to the principal, stating that there had not been a settlement of accounts, and that he was willing to account from the day of his appointment to date. Subsequently, having resigned his employment, the agent brought a suit to have the latter document set aside, but that suit was dismissed. In a suit brought by the principal, the release of 1884, and its contents, were proved to the satisfaction of both the Courts below, which dismissed the suit on that ground, although the *ikrarnama* of 1885 appeared to them, in fact, to have been made. Upon the plaintiff's appeal, it was contended that the *onus* was on the defendant to explain his execution of the *ikrarnama*.

Held, that, inasmuch as it had been found by two Courts concurrently that the release of 1884 was valid, and that it necessarily followed from that finding that the document of 1885 so far as it expressed the agent's willingness to account was false, the *onus* was as much upon the principal to explain his reception of the *ikrarnama* of 1885 as upon the agent to explain its execution. The question as to the burden of proof had therefore been rendered immaterial by the facts proved. On the materials before them the Courts below had rightly decided in favour of the defendant.

It cannot detract from the weight of concurrent findings of fact that different courts, in arriving at the same result upon the same evidence, have not been influenced by precisely the same considerations: a difference of opinion to that extent is only calculated to suggest that the evidence, whatever view be taken of it, necessarily leads to one and the same inference.

APPEAL from a decree (26th November 1889) of the High Court, affirming a decree (22nd August 1888) of the Subordinate Judge of Purulia.

The appellant, Sri Nilmoni Singh Deo Bahadur, of Panch Kote, Raja of Pachete, in his plaint of 9th March 1886 charged with fraud the defendant, his am-muhktar in the courts and offices in Purulia, appointed on the 10th July 1877; and he claimed an account for the period from the 23rd June 1877 to the 10th May 1885, the date on which the defendant resigned the Raja's service. The suit, which was also for documents and money, was valued at Rs. 50,000. The plaint referred to a suit which the present defendant had brought against his principal in 1885, immediately after his service had ended. That suit had been dismissed by the Subordinate Judge of Purulia on the 31st August 1885; the Judicial Commissioner had affirmed this dismissal on the 13th March 1886; and the High Court had on the 7th August 1886, on a second appeal, declined to interfere. The object of that

suit was to have set aside, as having been improperly obtained, an *ikrarnama* dated the 8th May 1885, whereby the present defendant, before his resignation, agreed to account to the Raja from the day of his appointment.

The defence in the present suit was that all accounts had been duly taken, and a *farkhati*, or *khalasi*, *sanad*, dated the 11th Baisakh 1292, corresponding to the 22nd April 1884, had been executed to the defendant by the Raja; also that the document of the 8th May 1885 had been executed by the defendant under compulsion, he having already faithfully accounted to the plaintiff.

The decisions of the Courts below went upon the general evidence, oral and documentary, but in a great degree upon a consideration of the effect to be given to the two conflicting documents above mentioned. The Courts treated both documents as authentic, and concurred in the opinion that the state of things supported by the release of 1884 prevailed over the subsequent admission by the defendant signed in 1885. They held that the defendant was, by the releasing document of 1884, discharged from liability to account for his receipts and expenditure to the end of the Bengali year 1290, or 1883; but they directed him to account for stamps and documents which had subsequently come to his hands.

The Judges of the High Court, before whom the appeal came (NORRIS and MACPHERSON, JJ.), considering the position of the parties, were of opinion that, although no evidence had been given on the defendant's part to explain the circumstances under which he had executed the *ikrarnama* of 1885, it was insufficient to overcome the effect of the plaintiff's admission, contained in his "*khalasi*" *sanad* of the 22nd April 1884, that an adjustment of accounts had taken place. If the promise to account had been made, as set forth in the *ikrar* of 8th May 1885, it had been made without consideration. Upon the materials before the Court below the dismissal of the suit was right.

The present appeal was admitted by the High Court on the ground that a question was involved as to the right adjustment of the burden of proof, *viz.*, whether it was incumbent on the plaintiff in the first instance to explain the circumstances under which the *khalasi sanad*, or release, was executed in April 1884,

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or whether it was for the defendant to explain the circumstances under which the *ikrarnama* of the 8th May 1885 was executed.

Mr. *R. V. Doyne* and Mr. *J. H. A. Branson*, for the appellant, argued that the *ikrarnama* of 1885, in which the defendant had undertaken to account, thereby admitting a liability which was upon him, in consequence of his position as agent, had not received due effect in the Courts below. It out-weighed the evidence afforded by the release of 1884. To question the accounts and the sufficiency of the examination of them was open to the appellant; and the Courts below had erred in attributing too much to the execution of the release of 1884. The burden, which was on the respondent to explain why it had happened that, if he was not liable to account, he had signed the *ikrarnama* promising to account, had not been discharged.

Mr. *J. D. Mayne*, for the respondent, relied on the concurrent judgments of the Courts below as conclusive upon the facts, contending that no question of law had arisen.

Afterwards, on the 28th April, their Lordships' judgment was delivered by

LORD WATSON :—In this appeal the written pleadings in the Courts below do not clearly indicate the real nature of the controversy between the parties. In order to explain their relative positions, it is necessary to advert to certain facts which must now be accepted, because they are either matter of mutual admission or have been affirmed by concurrent judgments.

The respondent, Kirti Chunder, acted at Purulia as the mukhtar and cashier of the appellant, the Raja Nilmoni Singh, from the 23rd June 1877 until the 10th May 1885, when he resigned his office.

On the 22nd April 1884 a deed of release was executed by the appellant in favour of the respondent, which sets forth that one Sita Churn Biswas had, by direction of the appellant, examined the respondent's accounts and found that no balance was due, and accordingly exonerates the respondent from all liability in respect of all that he had done, and all matters connected with moneys realized and expended from the date of his appointment as mukhtar and cashier until the 10th April 1884. Sita Churn

was, at that time, the chief clerk in the employment of the appellant; the deed, which bears the seal of the Raja, is in his hand-writing.

In June 1884 Sita Churn was dismissed upon a charge of dishonesty. After a considerable lapse of time, a rumour reached the appellant to the effect that Sita Churn had been tampered with, and had been induced to report, contrary to the fact, that no balance was due upon the respondent's accounts. He thereupon summoned the respondent, who was still in his service, to appear before him on the 8th May 1885. On that occasion the respondent signed a document addressed to the appellant, in which he states that there had been no examination or adjustment of his accounts, and professes his willingness to render an account from the day of appointment up to date. The document assigns no reason for its execution, and no consideration was given for it.

On his leaving the appellant's service, the respondent at once brought an action to have the writing of the 8th May 1885 declared null and void, on the ground that it was obtained from him by threats and coercion. That suit was, on the 31st August 1885, dismissed by the Deputy Commissioner of Manbhum, whose judgment was subsequently affirmed by the Judicial Commissioner, and also by the High Court.

This action was brought by the appellant in March 1886 for a general accounting from the date of the respondent's appointment in 1877 until the 10th May 1885 and for payment of Rs. 50,000, or such other balance as might be ascertained upon enquiry. The plaint makes no allusion to the release of the 22nd April 1884; but it refers in vague and general terms to the document of the 8th May 1885 and the respondent's unsuccessful attempt to set it aside. In his written statement the respondent urged various preliminary pleas; but on the merits his main defence was that the appellant's demand for an accounting for the period antecedent to the 10th April 1884 was excluded by the release up to that date. He also pleaded that, inasmuch as his suit to set aside the writing of the 8th May 1885 was dismissed on the ground of insufficiency of proof the decree in that suit could not be used as evidence against him.

Of nine issues adjusted in order to try the merits of the cause, one only was noticed in the argument addressed to this Board,

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because the answer given to it constitutes the foundation of both judgments appealed from. It is in these terms:—

"1st. (*a*) Has the defendant (respondent) rendered to the plaintiff (appellant) accounts of all receipts and expenditure of moneys, stamps, and other moveable properties up to the end of 1290 (10th April 1884); and did the plaintiff (appellant) give him a discharge from all liabilities up to that year inclusive?"

The Subordinate Judge, and, on appeal to the High Court, NORRIS and MACPHERSON, JJ., have answered that issue in the affirmative, except in so far as it relates to stamps and documents which came into the respondent's hands during the period in question, which, in their opinion, were not covered by the terms of the deed of release.

Their Lordships do not doubt that, if an issue in these terms had been submitted to the consideration of a jury, it would have been necessary for the presiding Judge to give them some directions as to the legal construction of the documents bearing upon it, and as to the legal principles by which they were to be guided, all questions of fact being left to their disposal. It is obvious that the appellant cannot succeed, unless he is able to show, either that the inferences of fact drawn by the learned Judges are manifestly wrong, or that they have erred in law, by misconstruction of documentary evidence, or by misapplication of legal principle to the facts found by them. It cannot detract from the weight of concurrent findings of fact, that different courts, in arriving at the same result upon the same evidence, have not been influenced by precisely the same considerations. A difference of opinion to that extent is only calculated to suggest that the evidence, whatever view be taken of it, must necessarily lead to one and the same inference.

Notwithstanding the ingenious argument addressed to them by Mr. Doyne on behalf of the appellant, their Lordships have been unable to discover that the answer given to the issue by either of the Courts below is wrong in fact or tainted with legal error. The case presented by the parties respectively, upon their pleadings and proof, though it raised some curious considerations of fact, left little room for legal subtleties. The plaintiff claimed an accounting on the ground that his accounts had been examined

and passed, and that he had got a discharge. The appellant, on the other hand, disputed the genuineness of the discharge and relied upon the *ikrar* of the 8th May 1885 as showing conclusively that there had been no examination of accounts, and that no release had ever been granted. These were questions of fact, and of fact only; and neither of the parties gave the Courts much assistance in determining them. Neither the appellant nor the respondent was examined as a witness, and Sita Churn Biswas was not called by either of them. In the absence of their testimony, both Courts were statisfied that the release of the 22nd April 1884 was a genuine document; that it had been preceded by a detailed examination of the respondent's accounts, made on behalf of the Raja; and that the respondent had used no unfair means to obtain it.

These findings appear to their Lordships to be conclusive against the case set up by the appellant, and to deprive of all value the document of the 8th May 1885 upon which he relied. It necessarily follows from them that the statements in that document, in respect of which the respondent professes his willingness to account, are absolutely false. It is true that the respondent has failed to establish that the document was extorted from him by compulsion; and that he has not explained why he signed it. In petitioning for leave to appeal the appellant represented to the High Court that, as matter of law, the *onus* was upon the respondent of explaining the circumstances in which he executed the document, and that he had failed to discharge it. The same argument was pressed here; but in their Lordships' opinion the question of *onus* becomes very immaterial when it is found that the release of the 10th April 1884 was valid. In that case, the *onus* is as much upon the appellant to show why he accepted a document which he knew, or ought to have known, to be a tissue of falsehoods, as upon the respondent to explain what induced him to sign it.

Their Lordships will humbly advise Her Majesty to affirm the judgments appealed from. The appellant must bear the costs of this appeal.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Barrow* and *Rogers*.

Solicitors for the respondent: Messrs. *Miller*, *Smith*, and *Bell*.

C. B.