

## APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty and Mr. Justice  
H. G. Smith

1936  
July, 28

SRI PRASAD AND ANOTHER (DEFENDANTS-APPELLANTS) v. SPECIAL MANAGER, COURT OF WARDS, BALRAMPUR ESTATE (PLAINTIFF-RESPONDENT)\*

*Evidence Act (I of 1872), sections 73 and 90—Shankalap deed conferring under-proprietary rights—Wajib-ul-arz showing no under-proprietary rights—Presumption under section 90 about genuineness of shankalap deeds—Presumption of authority to execute a deed—Deed not bearing any one's signature—Seal, whether can be regarded as signature—Presumption of genuineness of seals—Document thirty years old produced from Settlement file—Seal on a document, when can be used for comparing it with impression of seals on other documents.*

Where a thirty years' old document bears the signature of a certain person, it may be presumed under section 90, Evidence Act, that the signature and the writing in the document are in the handwriting of that person, but there can, however, be no presumption as to who this person is and what authority he had to execute the document. Similarly, where a document does not bear the signature of any one, no presumption can be made as to who wrote it and on whose behalf.

The Courts should be very careful about raising any presumption under section 90, Evidence Act in favour of old deeds of *shankalap* which are produced practically for the first time during the trial of suits in which under-proprietary rights are set up on the basis of those deeds, unless they are supported by evidence that might free them from the suspicion of being fabricated. *Ram Naresh v. Chirkut* (1), relied on.

Where the conduct of the claimants of under-proprietary rights belies their contention that they are under-proprietors and seems to throw doubt on the genuineness of the *pattas* produced by them and both the *wajib-ul-arz* and *rubkar* of the last settlement of the village show that, as a matter of fact, no under-proprietary rights have been conferred on any one in the village, the value of these documents is completely destroyed.

\*First Civil Appeal No. 75 of 1934, against the decree of Babu Gauri Shankar Vanna, Subordinate Judge of Gonda, dated the 14th of May, 1934.

(1) (1932) I.L.R., 8 Luck., 18.

*Shailendranath Mitra v. Girijabhushan Mukerji* (1), *Gur Sahai v. Sadik Mohammad* (2), *Maharaja of Benares v. Debi Dayal Noma* (3), and *Sadik Husain Khan v. Hashim Ali Khan* (4), referred to.

Section 90, Evidence Act, makes no provision for any presumption in regard to seals, and a seal cannot be regarded as a signature within the definition contained in the General Clauses Act. *Special Manager, Court of Wards, Balrampur v. Tirbeni Prasad* (5), relied on.

No legal presumption can arise as to the genuineness of a document more than thirty years' old, merely upon proof that it was produced from the records of a Court in which it had been filed at some time previous. It must be shown that the document had been so filed in order to the adjudication of some question of which that Court had cognizance, and which had come under the cognizance of such Court. *Gudadhur Paul Chowdhry v. Bhyrub Chunder Bhuttacharji* (6), relied on *Rex v. Amanoolah Mollah* (7), referred to.

Where the seal on a particular document is not proved or admitted to be genuine, it cannot be legitimately used under section 73, Evidence Act, for comparing it with the impressions of seals on other documents.

Messrs. *Hyder Husain, Zahur Ahmad and Mahmud Beg*, for the appellants.

Messrs. *H. S. Gupta (R. B.) and Jagdish Prasad*, for the respondent.

NANAVUTTY and SMITH, JJ.:—This is a defendants' appeal against a judgment and decree of the Court of the learned Subordinate Judge of Gonda decreeing the plaintiff's suit with costs. The plaintiff is the Special Manager of the Court of Wards in charge of the Balrampur estate, and he has filed the suit out of which this appeal arises for a declaration that the defendant Sri Prasad and his son Partap Narain, subsequently impleaded, have got no proprietary or under-proprietary rights in village Bisrampur, a hamlet of the *hadbast* village Sukhrampur in pargana Tulshipur in the district of Gonda. The plaintiff came to Court on the allega-

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(2) (1883) 18 P.R., 556.

(3) (1881) I.L.R., 3 All., 575.

(4) (1916) L.R., 43 I.A., 212.

(5) (1935) O.W.N., 387.

(6) (1880) I.L.R., 5 Cal., 918.

(7) (1866) 6 W.R., Cr., 5.

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tions that Raj Tulshipur belonged to Raja Drig Narain Singh at the time of the annexation of Oudh by the British in 1856, that owing to the Raja having rebelled against the British Government, the latter confiscated his estate and conferred it on Maharaja Sir Drig Vijai Singh Bahadur, on whom a *sanad* was also conferred which granted absolute proprietary rights over the entire "*ilaga*" of Tulshipur, that Bistrampur, which is a hamlet of the *hadbast* village Sukhrampur, formed part of Tulshipur estate, that Sri Prasad defendant No. 1 and his predecessor-in-interest were lessees on behalf of Maharaja Sir Drig Vijai Singh and his successors, that the plaintiff issued two notices of ejection, under section 55 of the Oudh Rent Act on Sri Prasad, one in respect of village Bistrampur and the other in respect of *khudkasht* land in village Bistrampur, that the defendant Sri Prasad filed two suits to contest these notices of ejection, that the Assistant Collector of Gonda who tried the suits upheld the notices, but in appeal the Commissioner of Fyzabad decreed the suits of Sri Prasad defendant and cancelled the notices of ejection finding that Sri Prasad was holding the village of Bistrampur as an under-proprietor, that the defendant Sri Prasad and his predecessors-in-interest have been holding this village Bistrampur as mere *thekadars* or lessees since 1268 Fasli and they have no other rights whatsoever, and that as lessees the defendants are estopped from setting up any claim to under-proprietary rights.

The defendant Sri Prasad in his written statement admitted that Raj Tulshipur was confiscated by the British Government and granted to Maharaja Sir Drig Vijai Singh Taluqdar of the Balrampur estate, but he relied upon the decision of the Commissioner of Fyzabad which was based upon the *pattas* of 1235 Fasli and 1251 Fasli and alleged that his ancestor, Pandit Ramakant, was a great astrologer and the family priest of the Raja of Tulshipur, and that Raja Dan Bahadur Singh in 1235 Fasli granted this village Bistrampur to Pandit Ramakant by way of "*Shankalap Kushast*", and that in 1251 Fasli

the son of Raja Dan Bahadur Singh not only confirmed this grant of *Shankalap*, but confined it to the eldest branch of the family.

Upon the pleadings of the parties, the learned Subordinate Judge framed the following two issues :

(1) Are the defendants under-proprietors of the village in suit?

(2) Are they estopped from claiming under-proprietary rights, as alleged by the plaintiff, under section 116 of the Indian Evidence Act?

Both these issues were decided by the learned Subordinate Judge in the negative, and upon his finding on issue No. 1, he decreed the plaintiff's suit with costs.

The defendants have appealed to this Court. We have heard the learned counsel of both parties at great length and have carefully examined the documentary evidence upon which the defendants-appellants rely in proof of their assertion that they have got under-proprietary rights.

The case of the defendants-appellants rests primarily upon three documents, exhibits A-1, A-2 and A-3. Exhibit A-1 is a *patta*, or lease, purporting to bear the impression of the seal of Raja Dan Bahadur Singh. It bears the signature of one Ajudhia Prasad, and the date second Asarh Badi 13th, 1235 Fasli. It appears to have been written slowly and with care in very legible *Dev Nagri* character. Exhibit A-2 is a document that also purports to bear the impression of the seal of Raja Dan Bahadur Singh, but it is not signed by anybody. At the top of the document, standing by itself, is the year 1235 Fasli; besides that it bears no other date showing on what day of the year it was prepared. It gives full details in respect of the boundaries of Bisram-ka-purwa. There is no word or phrase in this document to show that it was in any way connected with the lease (exhibit A-1), or that it was prepared at the same time when that lease was drawn up, nor is there any mention in this document (exhibit A-2) to show that this hamlet of Bisrampur was

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granted by way of *Shankalap Kushast* to Pandit Ramakant Joshi, nor is there anything in this document to explain why the specifications of the boundaries of this village were set forth at such inordinate length. The occasion and the necessity for the drawing up of this document do not appear on the face of it. It is written in Hindi and is not as legible as the writing on exhibit A-1, and the person who wrote exhibit A-2 does not appear to be the same who wrote exhibit A-1, although, in the course of his argument, the learned counsel for the defendants-appellants assumed that these two documents (exhibits A-1 and A-2) were written at one and the same time by the same person.

Exhibit A-3 is a *patta*, or lease, bearing the impression of a seal within which are written the words "Sri Ratan Nath Ji Sahai Mohar Kutchery Tulshipur". There is no date contained in the impression of the seal. This lease purports to have been executed by the Maharaj Kumar Jugraj Sri Sri Sahib Ji, the eldest son of Raja Dan Bahadur Singh. It bears the signature of one Hira Lal, and is dated Bhadon Badi 1st, 1251 Fasli. It purports to confer a *Shankalap Kushast* grant in respect of village Bisrampur in favour of Pandit Suraj Kant Joshi, and declares that the grant will be given effect to in accordance with the old lease, and no one except Suraj Kant Joshi will enjoy the grant, and that his relations ("*bhai log*") will have no claim. It may be noted that none of these documents (exhibits A-1, A-2 and A-3) ever saw the light of day until they were filed in the suits brought by the defendants to contest the notices of ejectment. It may also be noted that exhibits A-1 and A-2 appear each of them to have a piece of paper of the same colour (brown) affixed to the back of them, and it does not appear from the record when this was done.

The learned counsel for the defendants-appellants has strenuously argued before us that these three documents (exhibits A-1, A-2 and A-3) should be presumed genuine under section 90 of the Indian Evidence Act, and that

the learned trial Judge was wrong in not making that presumption and in holding that these documents are not genuine. In approaching this matter, we cannot do better than cite certain observations to be found in the Commentary on the Law of Evidence by Messrs. Woodroff and Ameer Ali (8th Edition, p. 579). The learned Commentators say:

"But this rule of presumption which, it has been said, should even in England be carefully exercised, must be applied with exceeding caution in this country where forgery and fraud cannot be said to be of rare occurrence, and where, therefore, this reason for the rule has not the same weight in this country as it is supposed to have in England. *Here, therefore, less credit should be given to ancient documents which are unsupported by any evidence that might free them from the suspicion of being fabricated, since even in England this evidence when unsupported is of very little weight.*"

This warning given by these learned Judges receives further support from certain observations made by the Settlement Officer of Gonda in a judgment decided as early as the 7th of January, 1873, (see exhibit 62, page 53, Part III of the paper-book), discussing the claim brought by a certain Musammat Rudra Kumari in respect of the villages included in Raj Tulshipur against the Maharaja of Balrampur. The learned Settlement Officer in his judgment had occasion to make the following trenchant observations:

"In fact the whole claim is supported by an impudent chain of forgeries and false evidence; great numbers of such deeds relating to claims in this pargana have been put forward in court. Some blank deeds bearing seals of Rajas of Tulshipur have already been discovered in Gorakhpur and the accused after a full confession is said to have implicated *Hira Lal Dewan of the late Raja.*"

We may note that one of the documents (exhibit A-3) upon which the defendants-appellants rely bears the signature of one Hira Lal, presumably the same Hira

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Lal, Dewan of the late Raja of Tulshipur, who was said to have forged a number of deeds.

We may also note in this connection that in *Babu Ram Naresh Singh v. Chirkut and another* (1) (plaintiffs) and others (defendants), a Bench of this Court had occasion to make the following observations, at page 382:

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“The Courts should be very careful about raising any presumption under section 90 of the Indian Evidence Act in favour of old deeds of *Shankalap* which are produced practically for the first time during the trial of suits in which under-proprietary rights are set up on the basis of those deeds.”

In these circumstances it behoves us to approach, with the utmost care, the examination of these documents upon which the defendants-appellants base their title to be under-proprietors of village Bistrampur.

The learned counsel for the defendants-appellants has asked us to presume under section 90 of the Indian Evidence Act that the impression of the seal on each of the two documents (exhibits A-1 and A-2) is the impression of the genuine seal of Raja Dan Bahadur Singh, and that these impressions were affixed to the documents (exhibits A-1 and A-2) by Raja Dan Bahadur Singh himself or under his orders. In the circumstances of this case we do not feel justified in raising any such presumption under section 90 of the Indian Evidence Act in favour of the genuineness of the seal of Raja Dan Bahadur Singh, the impressions of which are to be found on exhibits A-1 and A-2. All that section 90 of the Indian Evidence Act lays down is that where a document is proved to be 30 years old and is produced from proper custody, the Court *may* presume that the signature and every other part of the document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to be so

(1) (1932) I.L.R., 8 Luck., 18; 9 O.W.N., 379.

executed and attested. In the present case, exhibit A-1 bears the signature of Ajodhia Prasad, and we may presume, under section 90 of the Indian Evidence Act, that the signature and the writing in exhibit A-1 are in the handwriting of Ajodhia Prasad. There is, however, no evidence on the record to show who this person Ajudhia Prasad is, and what authority he had to write this lease conferring under-proprietary rights on Pandit Ramakant Joshi. Exhibit A-2 does not bear the signature of any one, and, therefore, no presumption can be made as to who wrote it, and on whose behalf. There is also no evidence on the record to prove that the impression of the seal on each of the two documents (exhibits A-1 and A-2) is the impression of a genuine seal belonging to Raja Dan Bahadur Singh. In *Special Manager, Court of Wards, Balrampur v. Tirbeni Prasad and others* (1), which was a Bench decision and to which one of us was a party, it was observed that section 90 of the Indian Evidence Act makes no provision for any presumption in regard to seals, and that a seal cannot be regarded as a signature within the meaning of the definition contained in the General Clauses Act. An attempt was made on behalf of the defendants in the trial Court to prove that the impressions of seals on exhibits A-1 and A-2 were identical with the impressions of seals which were on exhibits A-27 and A-28, the originals of which are papers Nos. 13 and 15 to be found in the Settlement File No. 241, in re: *Bhawani Sahai and others v. Maharaja of Balrampur*, decided on the 8th of March, 1873, claim for *birt* rights in village Gopi Bhari included in village Sukhrampur *hadbast* No. 374, pargana Tulshipur, of the Court of the Settlement Officer of Gonda. We have examined very carefully for ourselves the impressions of seals on the originals of exhibits A-27 and A-28, and we are in entire agreement with the learned Subordinate Judge that the seals of these two documents (exhibits A-27 and A-28) do not agree with those on exhibits A-1 and A-2. The learned

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counsel for the defendants-appellants attempted to show that the impressions of the seals on exhibits A-1 and A-2 tallied with the impression of the seal on a certain paper No. 22 to be found in the Settlement File mentioned above, and he argued that the genuineness of the impression of the seal on paper No. 22 must be presumed. In *Gudadhur Paul Chowdhry and others v. Bhyrub Chunder Bhuitacharji and another* (1), it was held by two learned Judges of the Calcutta High Court that no legal presumption can arise as to the genuineness of a document more than 30 years old, merely upon proof that it was produced from the records of a Court in which it had been filed at some time previous, and that it must be shown that the document has been so filed in order to the adjudication of some question of which that Court had cognizance, and which had come under the cognizance of such Court. This paper No. 22 in the Settlement File purports to be an order of the Raja of Balrampur to his servants prohibiting them from taking forced labour from the blacksmiths and carpenters of a certain village. We cannot assume that the impression of the seal on this document (paper No. 22 of the Settlement File) is the impression of the genuine seal of the Maharaja of Balrampur. As has been observed in *Rex v. Amanollah Mollah* (2): "At the best, the test of comparison between the impression of one Native seal and another is but a fallible one and must be received with extreme caution." To assume that the impression of the seal on this paper No. 22 of the Settlement File is the impression of a genuine seal, and then by comparison with that impression to presume that the impressions of the seals on exhibits A-1 and A-2 are also genuine is, in our opinion, to beg the whole question. Section 73 of the Indian Evidence Act permits the comparison of any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by a person with the signature, writing

(1) (1880) I.L.R., 5 Cal., 918.

(2) (1866) 6 W.R., Cr., 5.

or seal on any document sought to be proved. We cannot hold that the seal on paper No. 22 of the Settlement File has been proved or admitted to be genuine, and, that being the case, the seal on this paper cannot be legitimately used for comparing it with the impressions of the seals on exhibits A-1 and A-2.

Exhibit A-1 purports to bear the date second Asarh Badi 13th, 1235 Fasli, corresponding to the 11th of June, 1828. This "*patta*", or lease, was never acted upon up to now.

The "*wajib-ul-arz*" (exhibit 26, page 2, Part III of the paper-book) of village Sukhrampur clearly states that no one had under-proprietary or lambardari rights in this village with the exception of *birt* rights conferred on Bhawani Sahai in the hamlet of Gopi Bhari. Similarly the final Rubkar of the last settlement of village Sukhrampur (exhibit 28, page 9, Part III of the paper-book) also shows that with the exception of Bhawani Sahai Pande, who had got *birt* rights in village Gopi Bhari, no one had any under-proprietary or lambardari rights in village Sukhrampur, in which is included the hamlet of Bistrampur. The learned counsel for the defendants-appellants contended that the ancestors of the defendants did not take the trouble to assert their claims to under-proprietary rights before the Settlement Courts. In Sykes' Compendium of Oudh Taluqdari Law, we find an account given of how the officers of the Government tried to persuade every one to bring his claims before the Settlement Courts and to get them adjudicated upon. This fact is not disputed by the learned counsel for the defendants-appellants, but he contended that even if the ancestors of the defendants were negligent in asserting their rights that would be no reason for depriving them of their rights if they could prove that they had got those rights conferred on them. It was further pointed out on behalf of the plaintiff-respondent by his learned counsel that if the defendants were under-proprietors, then they could never have agreed to pay the sum of

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Rs. 1,185 a year instead of the under-proprietary rent of Rs.98-14 which is shown in their *patta* (exhibit A-6, page 29, Part III of the paper-book). The conduct of the appellants in paying such a large amount yearly as *thekadars* of the village Bistrampur is certainly utterly inconsistent with their claim to be under-proprietors of the said village, and there is no explanation forthcoming as to why, for the last 50 years and more, the defendants have been paying every year an ever-increasing amount of rent as *thekadars* to the Balrampur estate, while professing to be under-proprietors liable to pay only an annual rent of Rs.98-14. The conduct of the defendants-appellants in this connection certainly belies their contention that they are under-proprietors of village Bistrampur, and serves to throw very great doubt on the genuineness of the *pattas* (exhibits A-1 and A-2) produced by them in support of their contention. The learned counsel for the defendants-appellants relied upon a ruling of the Calcutta High Court reported in *Shailendranath Mitra v. Girijabhushan Mukherji* (1), in which it was held that a document of 1270 Fasli, which bore an endorsement "*shree sahi*", in place of the signature of the executant, had been properly executed. The facts of that case are very different from those of the present case. Here there is no signature or endorsement of the author of the grant of *Shankalap* rights to the defendants. It has been contended on behalf of the appellants that formerly well-to-do men of high position and noble birth used to carry seals and to affix those seals in place of their signatures, and in support of this contention, reliance was placed upon a ruling of the Allahabad High Court reported in *The Maharaja of Benares v. Debi Dayal Noma* (2). In that case, a plaint filed by the Maharaja of Benares in the Court of Small Causes at Benares was not signed by the plaintiff, but was stamped with his name and title. The presiding Officer of the Court considered that the plaint was not

(1) (1930) I.L.R., 58 Cal., 686

(2) (1881) I.L.R., 3 All., 575.

duly signed by the plaintiff within the meaning of section 53 of Act X of 1877. On a reference to the High Court, it was held that the word "stamped", as mentioned in section 2 of Act X of 1877, was not limited in the manner suggested by the learned Judge of the Small Cause Court. That ruling, however, has no applicability to the facts of the present case. Here there is no evidence to show that Raja Dan Bahadur Singh actually affixed his seal on the lease (exhibit A-1) or got it affixed by some one under his order. On behalf of the appellants a ruling of the Punjab Chief Court reported in *Gur Sahai v. Sadik Mohammad* (1) has also been cited to show that the affixing of a seal or stamp, on which the name of an alleged signatory is impressed, is a sufficient signing within the meaning of section 19 of the Indian Limitation Act. That ruling too has no applicability to the facts of the present case. Here the question of the genuineness of the seal is in dispute. Once it is proved that the impression of the seal on exhibit A-1 is the impression of the genuine seal of Raja Dan Bahadur Singh, then it may be presumed that the Raja signed the "patta" by affixing his seal on it.

For the reasons given above, we are not prepared to hold that the impressions of the seal on exhibits A-1 and A-2 are impressions of a genuine seal of Raja Dan Bahadur Singh, and are, therefore, not prepared to presume that these documents are genuine.

As to the document exhibit A-3, it may be further noted that it was executed at a time when Raja Dan Bahadur Singh was alive, and there is no explanation forthcoming as to why Raja Dan Bahadur Singh himself, the alleged author of the grant, did not explain in this document (exhibit A-3) that the grant was meant exclusively for the benefit of the eldest son of the grantee. The seal is also not the seal of the person who is said to have executed this document (exhibit A-3). It only purports to be a seal of kutchery Tulshipur, and it is not

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known to whom the original seal, the impression of which is on this document (exhibit A-3), really belonged. It is also not shown who this Hira Lal was and whether he had any authority from Raja Dan Bahadur Singh or his eldest son to write out this "*patta*" on behalf of the Raja or his eldest son. There is further no evidence on the record to show that there was any dispute between the sons of Pandit Ramakant to necessitate the intervention of Raja Dan Bahadur Singh or of his eldest son, and why, if once heritable and transferable rights had been conferred on Pandit Ramakant and his descendants, they were subsequently curtailed and confined to his eldest son. It seems to us that this exhibit A-3 bears internal traces of its being a forgery. It also appears to us that a slip of paper has been stuck on the upper part of the back of this document, and the whole appearance of it strikes us as very suspicious. We have, therefore, no hesitation in endorsing the finding of the learned Subordinate Judge that all these three documents (exhibits A-1, A-2 and A-3) are not proved to be genuine documents.

This virtually makes an end of the case set up by the defendants. They have, in support of the genuineness of these documents (exhibits A-1, A-2 and A-3) filed certain other documents, namely exhibits A-4, A-5, A-6, A-7 and A-8. Exhibit A-4 purports to be an application on behalf of Pandit Ramakant praying that the grant of *Shankalap* rights in village Bistrampur may be recognized. This is a most suspicious document. Although it bears the date 10th of July, 1868, it does not appear to have been filed in any Court until now. The learned counsel for the defendants-appellants has argued that it was actually filed in the Court of the Settlement Officer, but it was returned by that Officer along with the *patta* (exhibit A-6), and so it came back into the possession of Surajkant, father of the defendant No. 1, Sri Prasad. We are not prepared to accept this contention. If it

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had been filed, it would have borne at least the endorsement of the reader of the Court to the effect that it was presented by so-and-so and was brought on the file. The learned counsel for the appellants, in this connection, has cited the strictures made by their Lordships of the Privy Council in *Sadik Husain Khan v. Hashim Ali Khan and others* (1). The observations of their Lordships of the Privy Council in that case were directed against the omissions on behalf of the Presiding Officer to endorse with his own hand as to whether a certain document was proved against, or admitted by, the person against whom it was used. Even supposing that in this case, the Settlement Officer omitted to make any such endorsement on exhibit A4, there is no explanation forthcoming as to how and why the *peshkar* or reader of the Court omitted to make an endorsement that this document (exhibit A-4) was filed in Court. The embossed stamp on the exhibit A-4 also does not appear to have been punched in proof of the fact that the document had been presented in Court. This clearly shows that this document may have been prepared at some time by Surajkant with a view to filing a case in Court, but that it was never presented before any revenue officer with a view to action being taken on it. The same remarks apply to the other document, exhibit A-5, which is a power-of-attorney purporting to have been executed by Surajkant in favour of Talib Khan. That document also was never presented in Court, and the stamp on it has not been punched or effaced in any way. These two documents (exhibits A-4 and A-5) do not advance the contention of the defendants-appellants in any way. The learned counsel for the defendants-appellants laid great stress upon exhibit A-6, which is a rubkar, or formal order, from the Court of the Deputy Commissioner of Gonda. It shows that the Deputy Commissioner of Gonda was prepared to make the summary settlement of village Bistrampur with Pandit Surajkant

(1) (1916) L.R., 43 I.A., 212(237).

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subject to the sanction of the Financial Commissioner of Oudh. In a recent case decided by a Bench of this Court reported in *Special Manager, Court of Wards, Balrampur v. Tirbeni Prasad and others* (1), to which one of us was a party, there was a similar *patla* in identical terms filed in favour of Birja Ram Pandey. It was exhibit 18 printed at page 28, Part III, of the paper-book in that case. In that case, it was observed: "Exhibit 18 at best shows that settlement was proposed to be made with Birja Ram subject to the approval by the Financial Commissioner." Similarly, in the present case also, we find that though a tentative proposal appears to have been made by the Deputy Commissioner of Gonda to have the summary settlement of village Bistrampur in favour of Surajkant, still the village Sukhrampur, in which is included the hamlet of Bistrampur, was settled with one Pirthipal at the time of the first summary settlement, and at the time of the second summary settlement with Raja Drig Vijai Singh, Taluqdar of Balrampur (see exhibit 6, page 31 and exhibit 7, page 33, Part III of the paper-book). The defendant No. 1's father, Pandit Surajkant, came into possession of the village Bistrampur in 1268 Fasli, when he was given a lease of the village by the Balrampur estate (see exhibit 5, page 38, Part III of the paper-book). Before that there is no evidence on the record to show that any ancestor of the defendants was in actual possession of village Bistrampur between 1856 and 1861 A.D. In our opinion, exhibit A-6 was never given effect to for want of the sanction of the Financial Commissioner, who preferred to make the first summary settlement with Pirthipal, and not with Surajkant, as recommended by the Deputy Commissioner of Gonda.

Exhibit A-7 purports to be a *chalan* in respect of a tenant Sada Kant, brother of Surajkant. This document can be of no help to the defendants-appellants in proving their case.

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Exhibit A-8 purports to be a deposit by a person whose name cannot be deciphered correctly. It may be either read as Suraj Gir, or Surajkant or Suraj Gir Sahai. That being the case, no evidentiary value, for the purpose of this case, can be attached to this document. Moreover, the value of these documents (exhibits A-4, A-5, A-6, A-7 and A-8) has been completely destroyed by the entry in the "*wajib-ul-arz*" of village Sukhrampur (exhibit 26, page 2, Part III of the paper-book), as well as by the rubkar of the last settlement of village Sukhrampur (exhibit 28, page 9, Part III of the paper-book), which both show that, as a matter of fact, no under-proprietary rights were conferred on any one in village Sukhrampur, in which is included the hamlet of Bistrampur.

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JJ.*

For the reasons given above, we hold that the defendants-appellants have failed to prove that they are under-proprietors of village Bistrampur. We accordingly uphold the finding of the lower Court on issue No. 1.

In view of our finding on issue No. 1, it is unnecessary to give any finding on issue No. 2. The result is that this appeal fails and is accordingly dismissed with costs.

*Appeal dismissed.*

## APPELLATE CRIMINAL

*Before Mr. Justice E. M. Nanavutty and Mr. Justice  
Ziaul Hasan*

BRIJPAL SINGH (ACCUSED-APPELLANT) v. KING-EMPEROR  
(COMPLAINANT-RESPONDENT)\*

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*Evidence Act (I of 1872), section 114(b)—Evidence of accessories after commission of crime, whether sufficient to prove guilt—Corroboration, if necessary—Court to act on legal testimony and not upon mere suspicion.*

The evidence of accessories after the commission of the crime cannot be accepted as proving the guilt of the accused.

\*Criminal Appeal No. 235 of 1936, against the order of Mr. Raghubar Dayal, i.c.s., Sessions Judge of Unao, dated the 30th of June, 1936.