two years; but he never took any further steps in the case, and the decree of the Mayor's Court remained confirmed by that of the Governor in Council.

See the case of *Duberley* v. *Gunning*,* in which the want of a criterion is stated by a majority of the Judges, as a reason for not granting a new trial in this species of action; it being agreed by the Court that, in the case before it, the damages given by the jury were excessive.

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[3] PARK, EXECUTOR OF DOUGLASS *v.* MOOTIAH ADMINISTRATOR OF VIDENAIDA. (1799. *March 4th, April 30th.*)

MOOTIAH *v.* PARK.

A corrupt durbar transaction.

THE original bill was filed in the Mayor's Court in 1794, to recover, from the estate of *Videnaida*, the intestate of the original Defendant, the sum of 59,000 Pagodas, upon a note dated 30th June 1780, payable in three months, and a mortgage bond of the 21st of August following, alleged to have been given for the balance of an account, then settled. An account current was annexed to the bill, giving credit for various sums paid on the bond.

The answer of *Mootiah* admitted the execution of the note and bond, in favor of the Complainant's testator *Douglass*, but it stated, that *Douglass* was the confidential agent of a gentleman of the name of *Johnson*, who was the party interested in these instruments; and that they had been executed by *Videnaida* the intestate, at the instance of the then Nabob of the Carnatic, in consideration of services rendered him by *Johnson*; *Videnaida* and *Douglass* having been both merely nominal parties in the transaction.

The cross bill, praying the delivery of them up, on the ground that the note was barred by the statute of limitations, and that the bond was bottomed in an illegal consideration, detailed the services in which it alleged the latter to have originated, of which the answer of *Park* professed total ignorance.

Both answers having been replied to, witnesses were examined, and the two suits came on to be heard toge-[4]ther in the Court of the Recorder, upon the pleadings and depositions, together with a report by the Master.

Hall, for the original Complainant, and cross Defendant. *Anstruther*, for the original Defendant, and cross Complainant.

It was admitted in argument, that the statute had run upon the note; but it was contended that it might, notwithstanding, be tacked to the bond, which the Recorder denied, proceeding in substance, as follows:

RECORDER. With respect to the cases that have been cited in favour of tacking, it is sufficient to say of them, as applicable to the present, that they were cases upon bonds, where no question of the statute of limitations existed · which sufficiently distinguishes them.

But the point is, what is there here to tack the note to? which brings me to the question on the bond, upon which nothing can be clearer, than that payment of it can never be enforced.

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[2] * 4 Term Rep., p. 651.

The objection to it by the cross Complainant is, that it was given for a corrupt consideration; and it is true, that there is no positive demonstration that it was so. But the question is, whether such a presumption is not raised against it, by evidence that cannot deceive, as calls upon the Court to infer it, with as much certainty, as if it were more directly proved? And nothing is clearer to my mind than that, from the facts before us, sufficient appears to repel the original suit, and to sustain the object of the cross bill.

The charge against the bond is that it originates in a consideration which the law will not endure: and that, in the contrivance of it, a veil has been cast over something, which would not bear the light, is to me very clear.

Not to repeat minutely facts that are familiar, it is sta-**[5]**ted in the answer, and in the cross bill, that the Government of this Presidency having in 1779, taken possession of the Guntoor Circar, *Mr. Johnson* being at that time a Member of the Council, overtures were made to him by the then Nabob, through the mediation (as appears) of one *Bagavanloo*, that if he would, in Council, promote His Highness's views of obtaining possession of this Circar, he would give him 50,000 Pagodas; that this being agreed to by *Johnson*, a bond was given by the Nabob for the money, which not being paid, was renewed, and renewed again; but the better to cover what was to be concealed, and that a Councillor's name might not appear in a transaction of such a nature, it was renewed in the name of *Douglass*, the Plaintiff's testator, the notorious agent, as stands proved, of this gentleman's durbar corruptions.

The pleadings then state the bond in question to have been given for a balance due on the last of the preceding ones, upon which an account had been settled, and balanced, at Pagodas 19,000 odd, the sum for which it was given.

With regard to the answer of *Park* the executor, I must say, on the report of the Master, that one less to be relied upon was never put on the files of a Court of Justice. He does not indeed venture to say that there is no truth in the suggestion of a corrupt consideration, as connected with the bond; but, sheltering himself under the character of an executor not in India at the time, he contents himself with disclaiming any knowledge of the transaction; leaving the Court to believe, that, in as much as no evidence appears in *Douglass's* books, of *Johnson* having had any interest in it, it was a *bonâ fide* transaction of *Douglass's*, for his own sole benefit.

[6] This executor, possessed of the books of his testator, and professing to have examined them, has the hardiness to swear, that he believes the fact to be so, admitting at the same time (as he finds himself constrained to do) that, in a concern of this magnitude, his testator too having been a man of business who kept books, not a trace is to be met with as to the history of it, other than what appears by the account current, for the balance of which the bond was given.

Such being the state of the pleadings, it is to be seen how the facts stand, upon incontrovertible evidence.

And, if falsehood, and disguise, and darkness surround this case, and no real satisfaction is to be had, as to the truth of it, this is sufficient to infer

something, that will stop the Court from enforcing payment of this bond and justify it, in my opinion, in compelling a re-delivery by the executor of the securities in his hands, that accompanied it.

The first thing to remark upon is the account annexed to the bill, in which the Defendant's intestate, *Videnaida*, is debited with three bonds, of the three several dates of 31st *May*, 30th *June*, and 31st *July*, 1780; for the three several sums of Pagodas 16,000, 17,000, 17,000. But the 50,000 Pagoda bond, dated 1st *May* 1780, conditioned for the payment of that sum by instalments of Pagodas 16,000, 17,000, 17,000, severally on the 31st *May*, 30th *June*, 31st *July* 1780, and proved by the endorsement, in *Douglass's* hand-writing, to have been in the possession of *Douglass*, and, on the present bond being executed, to have been delivered up to the intestate, by whose administrator it has been exhibited in evidence, shews that statement to be false, a falsehood to be accounted for, upon no principle, but that of an intention to dis-[7]guise the transaction, by dropping the specific, and real sum of Pagodas 50,000, and presenting, on the face of the account, a transaction no way resembling it.

This is the first badge of contrivance. But this is light to the discovery arising from the Master's report, as compared with the answer of *Park*, and with the case made by the cross bill.

The account I have alluded to gives credit for a number of payments by *Videnaida* to *Douglass*, as for *Douglass*, the sums and dates being particularly specified.

Park's answer in every page of it, holds out the same idea, as the hinge upon which the whole turns. This is so important a feature in the case, that it becomes necessary to turn to those parts of the answer, that undertake to inform the Court, upon the oath of him who makes it, what they are to believe upon this part of the subject.

(These several parts of the answer were referred to, and read.)

These strong unqualified assurances of the executor went far to pursuade me, that the defence to the original bill could not be credited—they were evidently calculated for that purpose.

The question whether *Johnson* was or was not interested in this bond, could abstractedly have been of no consequence; but, as connected with the transaction imputed to it, it became of consequence; and it became convenient to deny it.

A natural desire in the Court, to possess all the light that could be obtained, suggested a reference to *Douglass's* books, which have been inspected by the Master, whose report I hold in my hand; and will it be believed by any one, who knows *Park's* answer, [8] and is ignorant of the contents of those books, that every one of the payments debited to *Douglass*, in the account current with *Videnaida*, applicable to the 50,000 Pagoda bond, as it turns out in evidence (the first of those payments only excepted), is regularly carried in *Douglass's* books, by *Douglass* himself, to the credit of *Johnson*?

(The Master's report referred to, and read.)

So stood the title, as to the 50,000 Pagoda bond.

That the bond that was given for the balance of that bond, and upon which the original suit is founded, is equally the property of *Johnson*, contrary to *Park's* assurance, is also satisfactorily proved, by the label under which *Chamier* swears he received it from Bombay, in *Douglass's* hand-writing, purporting that it belonged to *Johnson*.

Then, to apply these facts, as evidence of the charge made by the cross bill, I would ask,

Why the mis-statement, in the account current, with regard to the bonds upon which it professes to be stated?

Why this studied misrepresentation by *Park*, with regard to *Johnson's* concern in the transaction, which whatever was the nature of it, stands now demonstrated?

If it is a fact demonstrated, that *Johnson* was the real obligee, and not *Douglass*, why was the bond taken in *Douglass's* name, and not in *Johnson's*?

If it had been a transaction between Native and Native, it might have been answered, that it was so taken, for the sake of the advantage of seeing it in the Mayor's Court, which had not, generally, jurisdiction between Natives.

But a European could always have sued a Native in it; consequently *Johnson* might have taken it in his **[9]** own name; and, what reason can be imagined why he did not, but the one suggested by the cross bill, that it related to a transaction which shunned exposure?

It is now near twenty years since this bond was executed; of which fourteen had elapsed before any suit was brought upon it.

The sum is a large one, and, in all this interval, no interest upon it has been paid.

Then why this forbearance, if the claim was a fair one?

If the executors of *Douglass* were negligent, the real title being clearly in *Johnson*, why; if the transaction was a fair one, did he prefer losing the use of so much money, to coming forward and claiming it himself, while the evidence was recent? Perhaps he might think that the fittest person to be put forward, to inform the Court of the transaction, would be one who could know but little of it;—And the only reason, as I imagine, that can be given for any of these things, which seem so singular, is the reason alleged in the cross bill, and to be collected from the evidence of *Bagavanloo*, who swears that he was employed by the late Nabob to offer this gentleman a bribe of 50,000 Pagodas, which *Mr. Johnson* agreed to accept, and that the bond in question represents the balance of that bribe.

If this be the case, as I now believe it to be, it has not been attempted to be argued, that it can be supported in a Court of Justice.

It is indeed a contract that must stamp this gentleman's name with discredit, as long as it shall be remembered; a contract, which neither he, nor his confidential agents representing him, can recover upon.

"It is void by the common law, and the reason **[10]** why the common "law says such contracts are void, is for the public good;—You shall not stipu- "late for iniquity—all writers upon our law agree in this; no polluted hand "shall touch the pure fountains of justice—whoever is a party to unlawful

"contract, if he have once paid the money stipulated to be paid in pursuance of "it, he shall not have the help of a Court to fetch it back again. If it is not "paid, the party claiming it shall not make a Court of Justice auxiliary to "his corruptness."—*Procul! O! Procul este profani!* (a)

The consequence is that the original bill must be dismissed; the bond and note to be delivered up to be cancelled, and the securities restored to the original Defendant, as prayed by the cross bill, the costs of the answer to which must be paid by *Park*, the executor, *de bonis suis propriis*, as a punishment for the falsehood contained in it, for which he deserves a greater; and the rest of the costs of the cross suit must be paid out of the estate of the cross Complainant's intestate, who, by his shewing, was a *particeps criminis* in this transaction.

From this decree, there was an appeal on the part of the Plaintiff to the King in Council; which, on the petition of the Defendant, was dismissed with costs, for want of prosecution, having been depending, without being proceeded in, above three years.

August 16th, 1802.

[11] *PLEA SIDE.*

FRANK *v.* BARRETT. (1799. *Friday, March 15th.*)

Whether a person in the service of the Nabob is entitled to privilege?

THIS was an action of covenant.—The plaint having been filed, and the Defendant served with a summons to appear, he, on the 4th of March, upon filing a certificate from the Nabob, and an affidavit by himself and others, that he was in His Highness's service, as his principal Secretary and English Interpreter, and not concerned in trade, obtained a rule to shew cause, why the proceedings should not be set aside, on the ground of privilege. The Nabob's certificate, (which was in Persian, and proved as to the signature, by an affidavit sworn to by *John Battley*, his Persian Translator,) was to the following effect. "To all to whom these presents shall come, greeting. We *Umdut ul* "*Omrah Wallajah*, Nabob of the Carnatic, etc., do hereby certify, that *Col.* "*Thomas Barrett*, inhabitant of Madras, has been, for upwards of nine years "last past, and is now, really and truly retained in our service; and is now, "and hath, for the space of three years and upwards, been our principal, "confidential Secretary, and English Interpreter, in the affairs of our Govern- "ment with the Honorable the United East India Company, and others, with "whom we have concerns; and that he hath, for such length of time, and doth "now actually perform the duties of such joint offices, and hath and doth "receive from us a monthly stipend, or salary, for the discharge thereof. And "that his long, able, and faithful ser-[12]vice, as well as knowledge of our "private and public transactions, render his continuance in those characters of "the utmost importance to us and our affairs. Given under our hand, this "24th day of *Ramzan* 1213 *Hejery*, corresponding with the 2nd day of *March*, "1799."

Cause was shewn, on an affidavit by the Plaintiff, from which it appeared that, at the time of executing the deed that was the subject of the action,

[10] (a) Collins *v.* Blantum, 2 Wils. 349, 350.