REPORTS OF CASES DETERMINED IN THE COURT OF SUDDER DEWANNY ADAWLUT, CALCUTTA, BY W. H. MACNAGHTEN, ESQ., REGISTRAR OF THAT COURT.

VOLUME IV

CONTAINING

Select Cases from 1825 to 1829, inclusive.

[1] BABOO RAM DAS (HEIR OF BABOO MUKUND LAL, DECEASED), AND BABOO BUSUNT SINGH (HEIR OF BABOO DYAL SINGH, DECEASED), *Appellants v.* THE COLLECTOR OF BENARES, *Respondent.*
(1825. *Jan. 5th.*)

The treasurers of a Collector held responsible for a sum of money, said to have been stolen from the treasury under their charge.

THIS action was instituted in the Benares Provincial Court on the 12th of April 1814, by the Collector of Benares, to recover from Baboo Mukund Lal, *Khizanchee* of the *Sircaree* treasury, and from Baboo Dyal Singh, *Khizanchee* of the *Moolkee* treasury, the sum of 5,717 rupees, under the following circumstances: On the morning of the 30th of November 1819, when the treasury of the Collectorship of Benares was opened, it was discovered that a *nukub*, or hole, had been cut through the floor, and that the sum of 5,717 rupees was missing. The treasure chest in which the money had been deposited was not locked: but had evidently not been opened by violence: two empty money bags and a quantity of false coin were found in the room: after mature deliberation on the circumstances of the case, and the evidence taken before the Foujdaree Adawlut of the city of Benares, the Magistrate recorded his opinion on the case as follows: the *nukub* could not have been cut but from the inside, or by strangers, or by the sepoys of the guard: the theft must, for the following reasons, have been perpetrated by some persons well acquainted with the premises: first, because it appeared from an inspection of the room that the *nukub*, which was in the floor, had it been a little further from the wall, would have been directly under one of the chests: so that it must have been cut from the inside; secondly, had common thieves entered through the *nukub* from the outside, they would **[2]** not have left the two empty bags, as the removing the cash from one bag to another could not be done without some noise, which might have been overheard; thirdly, common thieves would have been unable to distinguish good from bad coin, and would have carried off all they could lay their hands on; and lastly, had the money been taken by strangers, the chests must have been forced open, whereas, though open, they were found unlocked.

For these and other reasons set forth in his proceedings, he considered the sepoy guard exculpated from all blame (the outer door having been found locked as usual): but thought that a very strong suspicion existed against the gomashtas and other servants of the treasurers. As, however, there was not sufficient proof against any individual to warrant a hope of conviction, he did not make over the case to the Court of Circuit; but left it to the revenue authorities to determine whether the missing sum was to be credited in the public account or not. A full report of the case having been submitted to Government by the revenue authorities, the Collector was ordered to institute a suit against the treasurer for the recovery of the said sum. He accordingly instituted the present action against both the defendants, whom he held equally responsible, as they had equal access to the treasury through their respective *gomashtas*.

Each of the defendants denied his individual responsibility, and endeavoured to throw the responsibility on the other.

Baboo Dyal Singh pleaded, that the duty of the *gomashtas* of the *molkee* treasurer was merely to enter into their accounts the payment of any sums on account of the public revenue due on the estates of the Raja of Benares: but that the money was received and placed in the treasure chests by the *gomashtas* of the *sircaree* treasurer; and the *gomashtas* of the *moolkee* treasurer had nothing to do with the safe custody of the money; that, on two former occasions, when the sums of 3,500 and 675 rupees were missing, Mukund Lal, holding himself responsible, traced the theft of the first sum to the sepoys of the guard, and having prosecuted them to conviction in the Criminal Court, received the amount which had been recovered under a receipt signed by himself, and paid it into the Collector's treasury: and replaced the second sum from his private funds, taking a bond for the same from his rokurea or cashkeeper. Baboo Mukund Lal, on the contrary, pleaded that the *gomashtas* of Baboo Dyal Singh, the *moolkee* treasurer, had the [3] custody of the money, his *gomashtas* having only to keep accounts of the receipts and disbursements; and that in the two instances above noticed, though Baboo Dyal Singh was the responsible person, he considered it his duty, as a public servant of Government, to exert himself to save the Government from loss. Both the defendants pleaded, that let the person whose duty it was to keep the cash be who he might, it was unjust to call upon them to replace the money stolen; as their *gomashtas* having counted the bags before the sepoys, and locked the doors on the eve of the night of the theft, their responsibility ceased; the safe custody of the property being then the duty of the sepoy-guard.

Before the case came to a final hearing, Baboo Dyal Singh died, and was succeeded by his son and heir Baboo Busunt Singh, who defended the suit in his room.

The Senior Judge of the Court, (W. A. Brooke), after hearing the pleadings and evidence of the parties, and perusing the proceedings held on this case in the Foujdaree Court, concurred with the City Magistrate in thinking that the burglary must have been committed by persons well acquainted with the premises, and that it could not have been committed from the outside by strangers, or by

the sepoys of the guard: and as it appeared in evidence, that the *gomashtas* of both the defendants had keys of the locks on the treasure chests and outer door of the treasury, and had equally free access to the treasury, he held them jointly and severally answerable. He accordingly passed a judgment in favour of the Collector, and decreed that defendants should pay into the public treasury the sum of 5,717 rupees. The costs of suit were charged to the defendants.

The defendants preferred separate appeals from this decision to the Sudder Dewanny Adawlut, and on the death of Baboo Mukund Lal, Baboo Ram Das, his son and heir, appeared to carry on the appeal. The pleas of appeal were similar to those urged by the appellants in the Provincial Court.

On mature consideration of the proceedings, the Court, (present C. Smith, Second Judge) seeing no sufficient reason for altering the decision of the Provincial Court of Benares, confirmed it, on the 5th of January 1825, and dismissed both the appeals with costs.

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[4] PRAN KISHEN DUTT, *Appellant v.* THE COLLECTOR OF THE TWENTY-FOUR PERGUNNAS, *Respondent.* (1825. *Jan.* 6*th.*)

A case of land confiscated, on account of a serious affray between two claimants, under section 6, regulation 49, 1793.

THE Collector of the Twenty-four Pergunnas instituted this action in the Zillah Court of the same district, against Pran Kishen Dutt and Shunkuree Dossea, a neighbouring zemindar, under the provisions of regulation 49, 1793, to obtain an order for the confiscation of a parcel of land situated in Chuk Narayun-Khatta, containing about 100 beegas of land. The land in question being claimed by both the defendants, had been the occasion of disputes, which ended in breaches of the peace. A serious affray, in which some persons were wounded, having taken place regarding the possession of the said land on the 17th of November 1815, the Magistrate committed the actual rioters, and held the defendants to bail, to stand their trial as instigators before the Court of Circuit, and directed the Collector to take proper measures for the confiscation of the land which had been the occasion of the affray. He accordingly instituted this suit under the provisions of section 6, regulation 49, and the concluding part of section 7, regulation 5, 1798, laying his suit at 1,000 rupees, at the rate of 10 rupees *per beega.*

Mussummaut Shunkuree Dossea appointed a *vakeel*, but took no further steps towards defending the suit.

Pran Kishen Dutt pleaded that the land in question belonged to Chuk Narayan Khatta, situated in his talook of Bahir Milanea, Turuf Baneyra, Pergunna Mandreh, and that he had obtained frequent decrees of Court, awarding to him the right thereto. With regard to the affray, which was the ground of the present action, he stated that the dependants of Mussummaut Shunkuree Dossea had cut the rice which his ryots had cultivated on three beegas of the land in question he not being present, and his people being perfectly passive: that the Circuit Judge, who tried the case, did not think his people guilty of affray, as, while he severely punished the opposite party, he sentenced his