

(1933) 12 CAL CK 0001
In the Calcutta High Court

Jagganath Addy

APPELLANT

Vs

Khetra Pal Bhattacharjie and Another

RESPONDENT

Date of Decision : 05-12-1933

Acts Referred:

Citation : AIR 1934 Cal 711 : 152 Ind. Cas. 560

Hon'ble Judges : Buckland, J

Bench : Division Bench

Judgement

Buckland, J.—The plaintiff sues in this case to recover the sum of Rs. 2,369-6-0 for principal and interest due on two promissory notes dated 16th July 1931 executed by the defendant Khetra Pal Bhattacharjie in his favour. In addition to Khetra Pal Bhattacharjie, he also sues Rai Bahadur Manindra Nath. Bhattacharjie, the father of Khetra Pal Bhattacharjie as guarantor. The defendant Khetra Pal Bhattacharjie has not put in any defence or appeared at the hearing. There will be a decree against him for the sum claimed with costs and interest on judgment at six per cent. The defendant Rai Bahadur Manindra Nath Bhattacharjie denies the guarantee and that in substance is the only issue in the case. The plaintiff's story in reference to the defendant Manindra Nath Bhattacharjie is that on 31st October 1932, Khetra Pal took him to his father who wanted to look at the promissory notes. He looked at them and said " Don't bring a suit against my son. I will pay you your money" and asked the plaintiff to call again on 3rd November. On 3rd November the plaintiff called and according to the plaintiff the Rai Bahadur told his son to accompany the plaintiff to the house of a Small Cause Court pleader, whither they went. Khetra Pal introduced the plaintiff to the pleader and Rs. 40 were paid to the plaintiff who gave a receipt. On 12th November the plaintiff heard about the insolvency of Lakin one of the joint-makers of the promissory notes to whom I have not referred because the suit has not been brought against him. On 18th November the plaintiff went to see the Rai Bahadur and complained that he was not being paid regularly. The Rai Bahadur, according to the plaintiff, reassured him and asked him to call again on, 25th November, and on that day the plaintiff went to the Rai Bahadur, who gave

him a cheque on the Imperial Bank for Rs. 150 and again told the plaintiff to call on him and not to sue his son for the money.

2. It appears that shortly thereafter criminal proceedings were instituted against the defendant Khetra Pal. The plaintiff went again and saw the Rai Bahadur about 18th or 19th January. The Rai Bahadur appeared to be very much upset but declined to make any further payment. That is the plaintiff's story. He is supported by the witness Korali Prosad Pathak who appears to have been the go-between in this matter. His evidence is that he accompanied the plaintiff on all four occasions, 31st October, 13th November, 25th November and 18th January. He does not speak to having done anything else in the matter. So far as these occasions are concerned there is no substantial discrepancy between the evidence of this witness and that of the plaintiff. The Rai Bahadur's evidence is that he never saw the plaintiff until 25th November, when he heard a noise going on in his house and found his son and the plaintiff having a quarrel about some payment or other. He says that he found his son was in the wrong and felt that he ought to help him and for this reason he paid Rs. 150. He denies having been in any way responsible for Rs. 40 paid earlier in November. He says that his son did so himself. He says that he saw the plaintiff again subsequent to 25th November and told him that he was not going to pay anything more, because he was never consulted when the money was lent to his son and he could not afford to do so.

3. These are the two stories in dispute. It is denied by the Rai Bahadur that he gave any guarantee. Ordinarily a moneylender lending money if he wants a guarantee, asks for a guarantee at the time that he gives the loan, and though that would appear to be the story which is made in the plaint, the story put forward here is that the guarantee was given some four months later than the loan in order to induce the plaintiff to forbear from suing the alleged guarantor's son. This case appears to have come out for the first time when the plaintiff was in the witness-box. There is no letter or other document of any kind referring to any such guarantee. There is no mention of the guarantee in the receipt for Rs. 40. If as is now suggested that the money was paid by the guarantor, one might well have expected that the plaintiff would have recorded it in the receipt. It is a strange coincidence that the witness, Pathak, accompanied the plaintiff on each of the occasions to which the plaintiff speaks in his evidence. Why did he do so? There is no particular reason why Pathak should have accompanied him on each occasion and no explanation of this has been forthcoming. The defendant's story by no means leads to the inference that because the father was willing to help his son, therefore the father was prepared to be guarantee and nothing of the kind can be inferred from the circumstances that the father paid Rs. 150. Had he been a stranger one might have said that there was more in it than met the eye but having regard to the relations between the two I am quite prepared to accept the Rai Bahadur's story in this respect. I am somewhat suspicious of the plaintiff and his witness and I accept the evidence of the defendant in preference to that of the plaintiff and his witness Pathak. The result is that the suit against the

defendant Rai Bahadur Manindra Nath Bhat-tacharjie will be dismissed with costs.