

(1924) 01 CAL CK 0024
In the Calcutta High Court

J.C. Galstaun

APPELLANT

Vs

Sonatan Pal and Others

RESPONDENT

Date of Decision : 23-01-1924

Acts Referred:

Citation : AIR 1925 Cal 485

Judgement

1. This is an appeal against the judgment and decree of the Subordinate Judge, 2nd Court of Dacca, by the plaintiff. The suit was brought for the purpose of enforcing a mortgage by deposit of title-deeds of certain properties at Gopechur made by one J.B. Sookias in favour of the plaintiff on the 22nd May, 1914. The plaintiff's case is that he had been advancing money to J.B. Sookias for the purpose of carrying on business in jute and this transaction commenced some time in 1906. On the 12th March, 1912, there was an adjustment of the account of the money due to the plaintiff from J.B. Sookias and this adjustment was made of the dues up to the 30th October, 1911, when Rs. 75,000 odd was found to be due to plaintiff from J.B. Sookias and Sookias acknowledged his liability to pay that sum with interest at 10 per cent. per annum with six monthly rests affixing his signature to the account made up on the 12th March, 1912. It was stated that this account with Sookias was kept in abeyance by the plaintiff, by which term it appears the parties meant that no further advance of money would be made to Sookias which would be debited in that account. Sookias used to carry on his business at a place called Nabiguuge at that time. On the 15th September, 1913, J.B. Sookias purchased some lands which are described as Gopachur property for Rs. 9,800. Gopechur is about 2 or 3 miles distant from Nabiguuge and he transferred his business to that place. The plaintiff then alleges that; a second account was opened between him and J.B. Sookias on the 26th November, 1913, and then, on the 22nd May, 1914, J.B. Sookias deposited his title deeds with regard to the Gopachur property with the plaintiff in Calcutta as security for the debts he then owed the plaintiffs as well as for future advances. Then, it is alleged that on the 30th June, 1914, Sookias gave the plaintiff a memorandum with regard to this deposit of title-deeds, and this

document has been described as a letter of hypothecation. Then, in 1916, J.B. Sookias fell ill and was in hospital in Calcutta. When he was in hospital the plaintiff states that on the 3rd July, 1916, adjustments were made with regard to both the accounts that he had with Sookias which were made up till the 30th June, 1916. It was alleged that on the first account Rs. 1,27,000 and odd was due to the plaintiff and with regard to the second account Rs. 45,000, and odd was due by the plaintiff to J.B. Sookias. Sookias acknowledged these adjustments on that day and put his signature to the accounts in acknowledgment of his liability. J.B. Sookias died on the 6th August, 1916 and the plaintiff brings this suit for the enforcement of the mortgage which was alleged to have been made by Sookias on the 22nd May, 1914.

2. The defendants Nos. 1 and 4 represent the estate of J.B. Sookias, the defendant No. 1, being the minor son of Sookias represented by his grandmother, defendant No. 4, who has taken Letters of Administration to the Estate of J.B. Sookias. The defendant No. 2 was a creditor of Sookias who had attached the disputed property in execution of his decree for money and had sold it in execution, the purchaser being the defendant No. 3.

3. It is alleged that defendant No. 2 was made a party as the sale in execution of his decree had not been confirmed when the suit was brought. The suit was contested by the defendant No. 3 alone. The defendant No. 2 alleged that he had been unnecessarily joined as a party and he only asked for his costs. The other defendants Nos. 1 and 4 appeared, but did not contest the suit and they admitted the claim of the plaintiff. Defendant No. 3 only appears in this Court to contest the

4. The defendant No. 3, who is the auction-purchaser of the Gopechur properties which are the subject of the plaintiff, has denied all the facts stated by the plaintiff in his plaint. He even denied the fact that the plaintiff had advanced any money to J.B. Sookias and also the fact of the several adjustments mentioned by the plaintiff of the accounts which he had with Sookias. More specifically, defendant No 3 alleged that Sookias had not made the deposit of title-deeds as alleged by the plaintiff, nor did he sign the letter of hypothecation alleged to have been given to the plaintiff on the 30th June, 1914.

5. It will not be necessary to deal with many of the statements made in his written statement having regard to the arguments that have been addressed to us by the parties in this Court. A large number of issues was raised in the Court below, but the important issues which have been argued before us are Issues 5 and 9. Issue 5 runs thus: "Does the plaintiff's mortgage, as alleged in the plaint, amount to an equitable mortgage and did J.B. Sookias give this Gopechur property to the plaintiff in equitable mortgage as alleged, and if so, what sum is due to the plaintiff on such mortgage?" The 9th issue was: " Were the aforesaid accounts adjusted and accepted as correct-and signed by J.B. Sookias as alleged by the plaintiff? If so, can the defendant No. 3 ask the Court to go behind the adjustment?"

6. The learned Subordinate Judge held that the plaintiff had advanced moneys to J.B. Sookias at an interest of 10 per cent. per annum and compound interest with six-monthly rests, and that there were two running accounts of the transactions between them and that the accounts were adjusted and accepted as correct and signed by J.B. Sookias.

7. With regard to the last portion of Issue No. 9 we need not deal, as the learned Judge found that the defendant No. 3" can question the account and upon the evidence he arrived at a sum which he found was due to the plaintiff. Neither of the parties before us challenged that account. The appellant did not do so on the allegation that, as there was no possibility of his recovering any amount of money in excess of what was found due by the Subordinate Judge out of the estate of Sookias, it would be useless waste of time to take us through the accounts for the purpose of increasing his own dues. The respondent, however, attacked the finding of the Subordinate Judge with regard to the first portion of the 9th issue in support of the decree in his favour.. His contention was that the adjustments spoken of by the plaintiff on the 3rd July, 1916 were not true and the signatures of J.B. Sookias in the two adjustments which were marked Exhibits 6 and 7 were not genuine. His argument was that on the 25th March, 1916 Sookias had written a letter to Galstaun in which there is this passage: "As I am anxious to see all accounts cleared up to date with your good self, on arrival will go through it thoroughly": and he further stated in that letter that he was leaving Naraingunge for Calcutta on Monday, the 27th March, 1916.

8. It is urged that, as Sookias wanted to go through his accounts thoroughly on the 25th March, 1916, it was not likely that he was able to do so on the 3rd July, when he was lying ill in hospital, within such a short time as he is stated to have taken in looking over the accounts. The fact that the accounts were adjusted has been proved by the plaintiff and his manager Basil. The plaintiff says in his evidence: "About 15 or 20 days before his death I had some conversation with him about his business. It may be a month before his death. The conversation was about accounts, I told him that Basil would take my accounts to him, and if he found it correct I asked him to certify its correctness. I sent Mr. Basil with the book. The next morning Basil showed me the book with the certificates of J.B. Sookias. These accounts bear the certificates. The certificates are, in my opinion, in the handwriting of J.B. Sookias." Basil says in his evidence that, " the certificate of acceptance and correctness of the account was written and signed by J.B. Sookias in my presence. That it was also signed and dated in my presence. There was another acceptance on that date. The certificate of acceptance and correctness of this account was also written and signed and dated in my presence. This was at the Presidency General Hospital in Calcutta."

9. This evidence is supported by J.B. Sookias, who was examined as a witness for the plaintiff.

10. This witness is a brother of J.B. Sookias. We do not see any reason why this evidence should not be accepted. There is no reason to suppose that Sookias did

not; know how his accounts stood with the plaintiff and that he could not examine the accounts when they were placed before him by Basil. We, therefore, hold, agreeing with the Subordinate Judge, that there were accounts between the plaintiff and J.B. Sookias which were adjusted and accepted by J.B. Sookias on the 3rd July, 1916 and that the interest that was agreed to be paid was 10 per cent. per annum with six-monthly rests.

11. The real question of importance in this case is involved in Issue 5. The Subordinate Judge has held that there was no deposit of title-deeds by way of security by Sookias with Galstaun on the 22nd May as alleged, and the document, bearing: date 30th June, 1914, was not signed by Sookias, but was a forged instrument and we shall have to deal with this question in some detail.

12. The evidence with regard to the deposit of title-deeds, as well as of the memorandum, is mainly that of the plaintiff. His evidence is that, some time in 1914, he pressed J.B. Sookias for security knowing that he had purchased the Gopechur property and had built on it with money which had been advanced by the plaintiff to Sookias, and thereafter Sookias brought the title deeds respecting the Gopechur property and handed them over to the plaintiff saying that the plaintiff was to hold them as security against the liabilities incurred and that should be incurred thereafter by Sookias to the plaintiff. He says that on the 22nd May Sookias made over his title-deeds at the office of the plaintiff, 57. Radha Bazaar Street, Calcutta in a bundle. The plaintiff examined the topmost document which was the conveyance obtained by Sookias of the property. The bundle was wrapped up in a piece of cloth. The plaintiff then says that he kept the bundle in a safe, and when Sookias handed over the documents to the plaintiff he said that he did so as security for the amounts he owed the plaintiff and which he would further owe him. At that time the plaintiff's manager Basil was present. Subsequently, Mr. J.B. Sookias gave him a letter and that letter, he said, was signed in his presence. In this matter he has been corroborated by his manager Basil, and it is unnecessary to state the evidence of Basil in detail. T.B. Sookias also gives evidence in support of the fact that J.B. Sookias brought the title-deeds from Gopechur in May or June, 1914 and he told the witness at that time that he was going to hand over the documents to the plaintiff and he says that he left Gopechur with a bundle containing documents. If this evidence is believed there cannot be any doubt that a mortgage was created in favour of the plaintiff by Sookias.

13. It is necessary to state that, as against this positive evidence, there is no evidence on behalf of the defendant contradicting this except in one particular. It has been alleged by some of the witnesses for the defence that J.B. Sookias was in possession of the title-deeds of Gopechur about the months of August and September of the year 1914. The evidence is to this effect, that these witnesses asked Sookias if he had purchased the Gopechur property and they wanted to see the title deeds in order to satisfy themselves that Sookias had actually purchased the Gopechur property in order that they might supply him with jute

on credit, and, on being so asked, Sookias did actually produce before them his title-deeds for their inspection on different occasions.

14. The evidence, on the face of it, seems to be incredible; for the reasons alleged as to why the documents were asked for by those witnesses could not possibly be true. Sookias had already been doing business at Nabigunge, which is only at a short distance from Gopechur, from 1906. The dealers of that place had been doing business with him from that time. The defendant No. 2, in his own evidence, says that he had commenced to deal with Sookias in 1912 and from 1912 to 1914 he does not say that there was any circumstance which led him to consider that Sookias had ceased to be such a good customer as he was before the purchase of his property in September, 1913. There was no reason whatsoever then for asking for the production of the title-deeds in 1914 for the purpose as alleged. The Subordinate Judge has not also accepted this evidence as he says: "Defendant No. 3 has adduced some oral evidence to show that after the date of the alleged deposit of title-deeds they were shown at Naraingunge by J.B. Sookias to him and his witnesses Nos. 5 and 9. I do not attach any weight to the evidence." We are also of opinion that this evidence is untrue.

15. The fact, therefore, remains that there is positive evidence on behalf of the plaintiff and there is no evidence on the other side contradicting it. In such a case, unless the circumstances are such that the evidence on behalf of the plaintiff cannot be true, we should not be disposed to hold that this uncontradicted evidence should be rejected. But the Subordinate Judge has referred to certain circumstances from which he comes to his conclusions and it is, therefore, necessary for us to deal with the grounds on which the Subordinate Judge has held that the plaintiff's evidence should not be accepted and the document, Exhibit 5, dated the 30th June, 1914 is a forged instrument.

16. We should deal, first, with the signature on the letter, Exhibit 5. The Subordinate Judge says, after looking into certain undisputed signatures of J.B. Sookias: "He used to sign with a flourish below his signature and this flourish is drawn from the last letter of his name. All these undisputed signatures are in a bold and running hand and the flourish in the signature is not easy to imitate. The alleged signature in Exhibit 5 does not appear to have been made with a running hand. It appears to have been made in rather a halting hand. Certainly the flow of writing in this signature is much less than in the undisputed signatures. The letter B, and the next letter "S" in the alleged signature are clearly in a halting hand." Then, lower down, he says: "The flourish below this signature does not resemble the flourish below any of the undisputed signatures. It appears to be an imitation of the flourish below one of the signatures made in the hospital, to with the signature in Exhibit 6." Exhibit 6 is the signatures in one of the adjustments of account acknowledged by J.B. Sookias on 3rd July, 1916. We may say at the outset that no expert evidence was given in this case on behalf of the defendant; for the purpose of comparing this disputed signature with the admitted signatures of Sookias. The observations which the Judge has

made have been made on his own view of the signatures.

17. The practice of a Judge declaring whether a disputed signature agrees with the other signatures of a certain person without the assistance of any evidence, but merely on his own inspection, has been disapproved by experienced Judges in many cases. It is especially undesirable that the Judge should take upon himself the task of comparing signatures in order to find whether there has been a forgery in such a case, where there is nothing to show on the record that) this signature "was alleged by any person to be a forgery. It is also difficult to say that because certain letters in the disputed signature appeared to have been written in a halting hand in the opinion of the Subordinate Judge, that it should be a forgery. In this connexion we think that the observation of Sir John Nicholl in the case of *Robson v. Roche* (1824) 162 E.R. 215, are appropriate.

18. He says, speaking of evidence relating to dissimilarity of signatures: ""But such evidence is peculiarly fallacious, where the dissimilarity relied upon is not that of a general character, but merely particular letters; for the slightest peculiarities of circumstance or position, as for instance, the writer sitting up or reclining or the paper being placed upon a harder or softer substance, or on a place more or less inclined-nay, the materials, as pen, ink, &c., being different at different times are amply sufficient to account for the letters being made variously at different times by the same individual. Independently, however, of anything of this sort few individuals, it is apprehended, write so uniformly that dissimilar formations of particular letters are grounds for concluding them not to have been made by the same person."

19. This seems to have been the experience of most persons about their own signature which they make at different times. We have carefully examined the signatures ourselves. We do not think that the disputed signature is such that it can be said to be a forgery. Speaking of dissimilarities, we may point out that the signatures. in Exhibit 67 (a) to 67 (d) which purport to have been made at the same time on the same document by Sookias and which are undisputed show dissimilarities and the same observations may be made with regard to those signatures as have been made by the Subordinate Judge with regard to the signature on Exhibit 5.

20. We must then deal with the observations of the Subordinate Judge with regard to the contents of the document Exhibit 5. The learned Subordinate Judge seems to have made too much of what he calls two slight inaccuracies in composition and those are the use of the word "owed" when it ought to have been "owe" and the fact that a comma had been placed after the word "account" instead of a full stop and the letter "a" following ought to have been a capital letter instead of a small letter. From this he comes to the conclusion that this draft could not have been made by an attorney, because he says that an attorney must be presumed to have good knowledge of English.

21. But the Subordinate Judge seems to overlook the fact that these mistakes

might have been made by the typist. It is a well-known fact, and which we see almost every day, that typed petitions presented in Court contain serious errors due to the typists' mistakes, and even in this document, Exhibit 5, in the list of the documents there will be found, even on a cursory view, that there are various mistakes due to the typists' errors. With regard to this we may also state that no question was asked during the plaintiffs' cross-examination about these inaccuracies. Now, even assuming that this document was drafted as it appears before us there is no reason to suppose that it was a forgery. The plaintiff says in his evidence that he spoke to some attorney, whom he could not remember, who made the draft. If the plaintiff wanted to forge a document he would have only to ask the attorney for a draft of a memorandum for deposit of title-deeds by way of security and he would have got it. The fact, therefore, that there are these inaccuracies in the document does not lead to the conclusion that it was not a genuine document.

22. The Subordinate Judge next seems to draw some inference against the plaintiff because of the draft not having been produced in this case. We do not attach any importance to this fact. Such a draft would not be preserved by any man of business in ordinary circumstances. In some cases drafts of documents may be necessary and their production highly important, as, for instance, where a Will is alleged to have been executed by a testator on his deathbed; and the question is whether the fair copy of the Will was in accordance with the draft approved by the testator. But we do not see any reason why the draft of a memorandum of the fact that title-deeds have been deposited as security should be preserved.

23. The learned Judge then makes certain observations with regard to the transaction being unbusinesslike. We do not see that it was unbusinesslike in any way having regard to the course of dealings of businessmen in similar transactions.

24. Mortgages by deposit of title-deeds are not allowed by the law in the moffusil. They can only be made in certain towns specified in the Transfer of Property Act, and suits based on equitable mortgages in moffusil towns are very rare, and it seems to us that the learned Subordinate Judge is not quite familiar with the way how these transactions are conducted in the cities. Supposing Sookias were alive and the suit had been brought against him could he be heard for a moment to say that the transaction was at all unbusinesslike? The whole difficulty has arisen from the fact that Sookias is dead and the plaintiff took possession of his properties under circumstances we shall state later on. If Sookias had been alive, certainly it could not have been urged by him, why there was no witness to this transaction, why was not any attorney called in, and so forth. In order to understand the nature of this transaction one must remember the relationship between the parties. Galstaun had every confidence in the integrity of Sookias as would appear from the fact that he had been making large advances of money to Sookias, and when Sookias produced the title-deeds of the

property before him, the plaintiff was satisfied, by looking into the last conveyance which Sookias had taken, as regards the nature of the deeds, and kept them in deposit. That being so, we do not consider that there was anything unbusinesslike in the transaction which would make the allegation of the plaintiff suspicious.

25. We should next deal with the other points of suspicion on which the Subordinate Judge relies. The first thing he says is that there is no documentary evidence to show that in 1914, or previously, the plaintiff ever pressed Sookias to give security for his debts to the plaintiff. The plaintiff has explained why he asked for security.

26. The Subordinate Judge deals with two documents, Exhibit 2 and Exhibit 3. Exhibit 2 is a letter at the end of which the plaintiff wrote: "Don't forget to get the title deeds of Gopechur godown as you promised." This letter is dated 12th May, 1914. In reply to this letter, Sookias wrote Exhibit 3, which is dated 14th May, 1914. The last lines are these: "Gopechur title-deeds I shall with pleasure bring them down for your inspection and satisfaction to my satisfactory bargain in that property." The Subordinate Judge considers that the plaintiff asked Sookias to bring the title deeds of Gopechur properties to him in order that the plaintiff might inspect them for the purpose of satisfying himself that Sookias had made a good bargain, and he comes to this conclusion with reference to the last few words of Sookias' letter. We must say that it is difficult to understand the meaning of what Sookias wrote. But we have no doubt in our minds that the plaintiff did not want the title-deeds of Gopechur properties for the object of satisfying himself as to whether Sookias had made a good bargain. It is in evidence that Galstaun knew about the purchase when it was made. The purchase had been made in Calcutta and the conveyance was prepared by a firm of attorneys here. Basil says that he had seen the title deeds of Sookias at the time the property was purchased. Whether Sookias had made a good bargain or not might be a question of some importance at or about the time of the purchase and if the plaintiff was so anxious to be satisfied about that he would have enquired into the matter at or about the time of the purchase. But a mere inspection of the title-deeds would hardly enable any person without any inspection of the property to decide whether the purchase of property was a good bargain or not. This property was purchased for Rs. 9,800 only in September 1913, buildings were made upon it by Sookias, and the value of the property at the time of the suit is said to have been about a lakh of rupees. Galstaun says that when he saw that buildings had been made on it by Sookias with moneys which he had advanced, he thought of taking that property as security for his debts by deposit of title-deeds. It seems to us that that is a probable explanation of plaintiff asking Sookias to bring the title-deeds and it was not for the purpose of being satisfied as to the bargain Sookias had made.

27. Then, we have to deal with two other letters, Exhibit 53 and Exhibit 54. The Subordinate Judge has, in our opinion, made a mistake with regard to the

inference he draws from Exhibit 53. That is a letter written by Sookias to the plaintiff, dated 8th January, 1916, and the relevant passage runs thus:- Regarding the pro-note my best endeavours are to reduce my old standing debts to you. Therefore, I am reluctant to sign a fresh note until I go down to Calcutta by end of this month and adjust our account. Then I shall be ready to give you anything that you may ask for. "The Subordinate Judge seems to have thought that this letter was in answer to a letter by Galstaun asking Sookias to execute a fresh promissory-note in his favour and from that he infers that there was a previous promissory note. If that was so, as he says, then the story of a mortgage by deposit of title-deeds would be false. We are unable to follow this reasoning of the Subordinate Judge. It is well-known that a debtor may execute a promissory-note in favour of his creditor and at the same time deposit his title-deeds by way of security for payment of the debt. In fact the oldest cases; with regard to equitable mortgages in our books before the Transfer of Property Act, show the fact of deposit of title deeds being endorsed on the promissory-note. In this case the deposit was made to secure the past and future debts. The amount of the debt was not ascertained and it is only natural that the creditor would ask for some acknowledgment for the debts by way of a promissory-note in order to fix the amount of his liability.

28. Much has been made by the learned Subordinate Judge about a press copybook of letters of the plaintiff. This press-copy-book was filed by the plaintiff on the 31st March, 1920 and it purported to be a copy-book of letters from 18th May, 1915 to the 24th February, 1916. After the close of the case of both parties the plaintiff's pleader took back this copy-book on the 29th June, 1921. The book, therefore, remained in Court for about a year and three months. The defendant, from time-to time, applied to the Court for inspection of the document and they obtained such orders. It may be presumed that they did inspect this book. But they did not choose to use any portion of this book as evidence on their behalf, nor did the plaintiff use it. After the book had been taken away from Court the Subordinate Judge desired to have it for the purpose of looking into the letter of the 4th January, 1916 which was mentioned in Sookias' letter of the 8th January, 1916 (Exhibit 53). It is unnecessary to state in detail about the various orders relating to this matter. On the 12th July, the plaintiff's pleader informed the Court that he was unable to produce the press copy-book as it had been sent to England where Mr. Galstaun then was for the purpose of some litigation there. The Subordinate Judge draws an inference against the plaintiff for non-production of this document. It should be borne in mind that the defendant did not ask for it, presumably because the defendant knew that there was nothing in the book to support his case. It was not until the Judge was anxious to have it and the plaintiff was unable to produce it that he presented a petition in Court that he had inspected the book thoroughly. In this Court, before us, the plaintiff offered to produce it if the defendant wanted it. But the defendant's vakil declined to accept the offer, and moreover, he said that he did not ask the Court to look into that book.

29. The obvious inference is that that letter has no bearing on the present question at all. The only inference the Subordinate Judge appears to make is that there was a promissory note prior to that date executed by Sookias in favour of the plaintiff. But the most remarkable thing in this trial is that questions which appear to be material to the Subordinate Judge were never put to the plaintiff when he was in the box and everything is left to conjecture as regards the probable meaning of letters and the transaction of the parties. The proper thing would have been to ask the plaintiff when he was in the box as to the matters dealt with by the lower Court.

30. The same observation would apply to the next two letters with which we are going to deal, that is the letter Exhibit 54 which was written by Sookias to the plaintiff in answer to the plaintiff's letter, Exhibit E.E., which is dated 23rd March, 1916. In the letter of the plaintiff he asked for a cheque and said, failing which Sookias must arrange to work elsewhere as he could not go on paying these large sums getting no return. The relevant portion of the letter in answer by Sookias, dated 25th March, 1916 is this: "As I am anxious to see all accounts cleared up-to-date with your goodself on arrival will go through it thoroughly. Any balance left I shall mortgage everything that I possess and refund you with grateful thanks. My aim and object has always been to pay off my dues to you and whatever I have made it has been paid to you, and I have kept no secret from you. I shall see that you will not lose a single pie out of my dues to you."

31. The Subordinate Judge says: "This letter indicates to my mind that there was no mortgage to the plaintiff previous to this letter," and he proceeds thus: "In this letter J.B. Sookias promised to mortgage everything that he then possessed in order to secure what might be due by him to the plaintiff." It seems to us that this is a misreading of the letter, because Sookias said, "I shall mortgage everything that I possess and refund you with grateful thanks." He did not speak of securing the debt of the plaintiff by mortgage but refunding him, that is, paying off his debt by mortgage, and, therefore, the letter does not contradict the fact that the debt had already been secured by a mortgage. The plaintiff was demanding money and not security, and the answer is that Sookias would pay the money by mortgage. It does not mean, therefore, that the mortgage should be effected in favour of the plaintiff, and it may mean that Sookias promised to pay off plaintiff by procuring money by mortgage to some other person. It appears to us that the argument based on these letters is altogether fanciful and not convincing.

32. It, therefore, seems to us that there is no ground based on the circumstances of the case on which it can be said that the plaintiff's case is inconsistent with the facts proved by him and on the facts disclosed by the evidence the plaintiff's story of the deposit of title deeds and the subsequent letter of hypothecation is false.

33. Then, with regard to some observations of the learned Judge as regards the truthfulness or otherwise of the plaintiff we do not think it necessary to make

any remarks at any length, for example, the Subordinate Judge says that the plaintiff had made false abatement in his affidavit sworn on the 25th April, 1917 and this refers to the mis-statement of the rate of interest at which he advanced money to Sookias. This is a statement which the plaintiff had made against his own interest because the rate of interest was given in the affidavit as 9 per cent. per annum, whereas it was really ten per cent. per annum with compound interest. It was reprehensible carelessness on the part of the plaintiff to make such a statement. To say that he had no scrupulous regard for truth on account of these statements seems to us to be going too far.

34. There is one other matter dealt with by the Subordinate Judge which we need only mention. That is with regard to the account-books of Sookias. The account books of Sookias, according to Galstaun, had never been sent to him. A letter has been produced by the defendant purporting to have been written by Galstaun on the 22nd August, 1917 asking J.B. Sookias, the brother of J.B. Sookias, his debtor, to send the cash-book, ledger and journals showing the debts of J.B. Sookias. J.B. Sookias had given a list of the debts of his brother to Galstaun for insertion in the application for Probate and the Probate Deputy Collector wished to see the accounts. In pursuance of that letter it has been proved that the documents had been sent to Calcutta, and it also appeared from the account books of the plaintiff that those were sent to the Collectorate, presumably for the purpose of satisfying the Probate Deputy Collector about the correctness of the entries made in the application for probate. Similarly with regard to the entries of the debts of T.B. Sookias and Basil in Exhibit A, the affidavit of Galstaun. These accounts of the debts, as will appear from the letter Exhibit E, were given by C.B. Sookias, to Galstaun and if there was any mis-statement, Galstaun could not be held responsible for telling a false story. But with regard to Basil's debt it is quite clear that the shares of the Lansdowne Jute Mills were pledged with him by C.B. Sookias, and Basil considered them, when he was giving evidence, as belonging to C.B. Sookias. But they have been taken as belonging to J.B. Sookias in describing the assets of J.B. Sookias and the debt was shown as the debt of J.B. Sookias by pledge of these shares. Therefore, it cannot be said that Galstaun had no regard for truth when making that affidavit.

35. Then one other fact must be stated with regard to this point. The debt of Galstaun was roughly speaking, about a lakh. The debt of other creditors who had not been paid would not exceed Rs. 20,000. If there was no mortgage in favour of Galstaun he could obtain a decree for money against the representatives of Sookias, and if he had asked for rateable distribution of the sale-proceeds he would get 5/6ths of the sale-proceeds and the other creditors would get only 1/6th. In the present case the property had been sold for Rs. 30,000, and the amount which the other creditors would get if Galstaun asked for rateable distribution after obtaining a mere money decree with regard to his debt, would not exceed Rs. 5,000. The advantage which the plaintiff would get by this mortgage in his favour is that the other creditors would be deprived of Rs. 5,000 only. It has been admitted that the plaintiff is a very wealthy man. He

has landed properties giving an income of about Rs. 30,000 a month and he makes 15 to 20 thousand rupees a month by his business. Apparently, he has some position in the mercantile circle. The learned Judge says that it is difficult for him to discover a motive for this forgery, to call it by its true name of Exhibit 5. It is possible that a man of the plaintiff's position may be guilty of the offence of forgery or of using a forged document as genuine. But there must be some relation between the advantage he expects and the risk he runs by that forgery. Here it is a question of money only, because it cannot be said that Galstaun is anxious to get the property, and to say that a man of his position stoops so low as to countenance forgery, if not actually doing it, for the gain of such a paltry amount would require some strong evidence to support it.

36. It is urged on behalf of the respondent that this fact of the mortgage was not given out by Galstaun immediately after the death of Sookias when some petty creditors of Sookias saw him or wrote to him about their debts. This is explained very well by the fact that, before the death of Sookias, he wrote a note that Galstaun should be guardian of his minor son. After the death of Sookias Galstaun actually took possession of all the properties of his debtor and it appears that he carried on the business of J.B. Sookias through his brother C.B. Sookias for some time. "When he was written to by these small creditors the answer he gave was that he would take Letters of Administration after the re-opening of the Court after the long vacation in 1914 and then look to the assets of the estate. There was no occasion for him then to state anything to the other creditors about his mortgage, and the fact that he did not tell them about this mortgage at the time does not go against the fact that there was such a mortgage.

37. Then, it has been urged that the pleader purporting to have been authorized by the plaintiff in that behalf made a statement in a petition, Exhibit 12, dated 1st May, 1919, that an equitable mortgage had been made on the basis of a letter of hypothecation on the 30th June, 1914, and the argument is that then it was intended by the plaintiff that there should be a letter of the 30th June, by which the mortgage by deposit of title-deeds was effected. We do not think that such a conclusion is warranted. It might be either a mistake of Basil who had instructed the pleader to file the petition or the mistake of the pleader. In any case, the document of the 30th June, 1914, does not create a mortgage by deposit of securities. On these grounds we are of opinion that it should be held that there was a mortgage by deposit of title-deeds on the 22nd May, 1914, and that the letter, dated 30th June, 1914, purported to be signed by J.B. Sookias was actually signed by him and which letter shows the terms of the loan.

38. The learned Subordinate Judge has found that defendant No. 3 had purchased with notice of the mortgage. This point has not been contested before us. But in any case, it seems to us that he, being a purchaser at a sale in execution of a decree, purchased the property subject to all the equities of the judgment-debtor and he cannot take up the position of a bona fide purchaser for

value without notice.

39. Am we have already said, no question has been raised as regards the amount which has been found due by the Subordinate Judge to the plaintiff, there will, therefore, be the usual mortgage-decree in favour of the plaintiff for the principal amount of Rs. 79,043-810 with interest at ten per cent. per annum with six-monthly rests from the date of suit to three months from this date, with costs calculated on the amount in the lower Court and in this Court. The defendants will bear their own costs throughout. The interest and costs of the plaintiff will be added to the mortgage-money. The period of redemption is fixed from this day three months. From after that date interest will run on the whole amount found due at the rate of six per cent. per annum.