

(1918) 02 PRI CK 0008

In the Privy Council

Jurawan Lal and another

APPELLANT

Vs

Baldeo Singh and another

RESPONDENT

Date of Decision : 22-02-1918

Acts Referred:

Citation : (1918) AIR(PC) 10

Hon'ble Judges : Ameer Ali, John Edge, Lord Sumner, Viscount Haldane, JJ.

Judgement

Lord Sumner

The issue in this case was simply whether the plaintiff had or had not paid certain money some twelve years before the trial. The burden of proof was on him. He did not go into the witness box. He called no satisfactory evidence to account for the disappearance of the important contemporary documents, namely, the receipts, which he alleged had been in his possession. The evidence of his witnesses was flimsy and contradictory. At The trial he succeeded.

The Court of the Judicial Commissioner, after a very careful examination of the evidence, held that he had not proved his case, and allowed the appeal. The Subordinate Judge had accepted his evidence not because it had impressed him as truthful, for he called it unconvincing, but because he thought that there was some presumption that such a payment must have taken place. It has been urged upon their Lordships that such a payment was probable, though for reasons which appear to have escaped the trial Judge. They are, however, reasons applicable to parties who were traders or professional money-lenders, but it is admitted that the parties here were cultivators and peasants, to whom such reasoning is much less applicable.

Their Lordships cannot see their way to displace a carefully reasoned judgment of the Judicial Commissioner's Court, on a question of fact which commends itself to their view of the case, merely in order to restore a judgment of the Subordinate Judge, which did not rest on the favour with which he regarded the witnesses, but on a speculation of his own as to the probabilities, which does not

appear to be satisfactory. Their Lordships, while recognising to the full the appellant's legal and constitutional right to appeal in this case, think that it should be observed that, on a question of fact, which has been already carefully examined by Judges fully conversant with the habits and practices of the country, an appellant must realise that he takes a heavy burden upon himself by bringing such a case before this Board.

Their Lordships will humbly advise His Majesty that this appeal ought to be dismissed, but without costs as it is *ex parte*.