

(1899) 07 CAL CK 0017
In the Calcutta High Court

Ram Parshad

APPELLANT

Vs

The Deputy Commissioner of Bara Banki

RESPONDENT

Date of Decision : 08-07-1899

Acts Referred:

Evidence Act, 1872 — Section 34

Citation : (1900) ILR (Cal) 118

Hon'ble Judges : Watson, J;Richard Couch, J;Hobhouse, J;Fry, J;Davey, J

Bench : Full Bench

Judgement

Richard Couch, J.—The suit, which is the subject of this appeal, was brought on the 26th August 1887 by Munshi Hanuman Parshad, manager and superintendent of the "Kayestha Patshala," Allahabad, against Rani Chabraj Kunwar, widow of the late Raja Mahpal Singh and Raja Pirthi Pal Singh, his son, a minor, under the guardianship of his mother the Rani, on a mortgage-bond, dated 4th September 1880, for Rs. 7,000, said therein to have been borrowed from Hanuman Parshad, manager of the Patshala, out of the Patshala's funds, and to be repaid with interest to the manager for the time being of the Patshala. The sum claimed to be due for principal and interest was Rs. 15,141-2-10. After the filing of the plaint the estate of the minor came under the management of the Court of Wards and the appellant was made a defendant in the suit. Previously to this suit being brought another suit between the same parties had, on the 13th April 1887, been brought on a similar bond, dated the 20th January 1881, for Rs. 7,000, in which the sum claimed for principal and interest was Rs. 13,547-14-8. On the 5th January 1889 the respondent on the death of Hanuman Parshad before the trial was made plaintiff in the suits in his place. The suits were tried together, it being agreed that evidence taken in the suit first instituted, which might be material to the other suit, should be evidence in that suit. Both were dismissed by the District Judge, his full judgment being given in the first suit.

2. The defence in each of the suits was that the lender of the money was not the

Patshala but Munshi Kali Parshad, a deceased vakil who used to practise at Lucknow, and who managed the transactions of the Patshala at Lucknow till his death, having endowed it with considerable property, and that the money had been repaid to him by the Raja. After the examination of the plaintiff had been finished his pleader stated in answer to a question by the District Judge that if the defendants proved that the monies due on the bonds were paid by the Raja to Kali Parshad his client was willing to treat such payment as made to himself. This was the only question that had to be decided. The Raja died on the 8th October 1898 (sic) and Kali Parshad died on the 10th November 1886. On the 3rd April 1887 Hanuman Parshad, as manager or president of the Patshala, sent a letter to the Rani demanding that the bonds should be paid, or that some arrangement should be made for their payment, and saying that he had sent Tara Parshad, the accountant of the Patshala, in order that he might bring a reply without delay. To this letter Muharram Husain, the karperdaz of the Surajpur (the Raja's) estate replied on behalf of the Rani on the 7th April by a letter in which he said that the money due on the bonds had been paid to Kali Parshad, that the accounts in the office of the estate had been shown to Tara Parshad and that Kali Parshad was the old vakil of the estate and consequently had not been asked to return the bonds or give receipts. On the 13th April 1887 the suit on the bond of 20th January 1881 was brought. It did not appear why the suit on the bond of the previous 20th September was not brought until August 1887.

3. The case of the defendants, as regards the payment of the bond of the 20th January 1881, is that the Raja received on the 26th April 1882 from the Bank of Bengal at Lucknow Rs. 27,010-5-3, part of a lakh of rupees borrowed from Mr. Jackson, and that out of this sum he paid Kali Parshad Rs. 16,406, which included the principal and interest due on the bond. It was not disputed that the Raja borrowed a lakh of rupees from Mr. Jackson and that he received Rs. 27,000 and odd from the Bank of Bengal at Lucknow on the 26th April 1882 as part of this loan, and that Kali Parshad deposited Rs. 17,000 in the London and Delhi Bank on the 1st May 1882. The principal witness for the defendants was Nand Kumar, a servant of the Surajpur estate, who had been in its service for 15 or 16 years. If his evidence is true this bond was paid. The defendants relied upon entries in a roshanbahi or day-book of the Surajpur estate and upon a list of the debts of the Raja made soon after his death. This list, which was produced, contained an entry of Rs. 20,000 due to "Hanuman Parshad, the manager of Kayestha Patshala," but there was no entry in it of either of the bond debts. Nand Kumar deposed that he made it out of the papers of the estate, and that Kali Parshad dictated the item of Rs. 20,000; he gave the list to Kali Parshad, and he filed it in the Tahsildar's Court; that Kali Parshad read the list in Nand Kumar's presence, and made no objection as to any debt due to the Patshala having been omitted; the Rani repaid the Rs. 20,000.

4. As to the entries in the roshanbahi their Lordships accept the statement as to it in the judgment of the Judicial Commissioner's Court. "This book was kept at the office of the estate at Hathaunda, and in it the money received and disbursed

on behalf of the estate was entered. Receipts or disbursements of money at any other place but Hathaunda were entered when the receipt or disbursement was brought to the knowledge of the office under the date of entry. For example, the karindas of the estate used to submit monthly accounts, which were abstracted and entered in the roshanbahi under the date of entry. Again, if the Raja visited Lucknow or any place, all money received or disbursed on his behalf by his servants was entered on his return to Hathaunda under the date of entry. That is to say, a servant of the estate might during a certain period receive or pay money for his master, and the receipts or payments for that period would be entered when the servant rendered an account perhaps many days after the date of the receipts or payments, and when entered would all appear under the date of entry. "It should be added that these entries were made in their proper order on the authority of the officer whose duty it was to receive or pay the money. The District Judge says in his judgment that this book was kept in the way in which talukhdars' accounts are kept, and the Judicial Commissioner's Court says that the evidence of Nand Kumar, Sarja Parshad, a late dewan of the Surajpur estate, and Lal Bahadur, a late mohurrir of it, was quite sufficient to prove that the roshanbahi is a genuine account-book of the estate; but on the authority of a decision of the Bombay High Court in *Munchershaw Bezonji v. The New Dhurumsey Spinning and Weaving Co* ILR (1880) . 4 Bom. 576, it held that the entries were not relevant u/s 34 of the "Indian Evidence Act," the book not being regularly kept in the course of business within the meaning of that section. In the case referred to the learned Judge held that the words in Section 34 "books of account regularly kept in the course of business" mean books entered up from day to day or from hour to hour as transactions take place. Their Lordships are unable to approve of this decision. It gives a much too limited meaning to Section 34. If it were correct, merchants' and bankers' books regularly kept would in many cases be excluded from being used as corroborative evidence. The time of making the entries may affect the value of them, but should not, if not made from day to day or from hour to hour, make them entirely irrelevant. Notwithstanding the rejection of the entries the Appeal Court held on the other evidence in the case that the defendants had established that the Raja paid Kali Parshad the amount due on the bond of the 20th January 1881, agreeing with the finding of the District Judge as to this bond, and they dismissed the appeal in the suit on it. But as to the bond of the 14th September 1880 they held that the entries not being relevant the proof of payment rested entirely on the evidence of Nand Kumar and the inference to be drawn from the bond debt not being entered in the list, and this being the only admissible evidence on the point, the defendants had failed to prove that the Raja paid that bond to Kali Parshad. Their Lordships being of opinion that the entries were admissible to corroborate Nand Kumar, they think the payment of this bond to Kali Parshad was also proved, and they will humbly advise Her Majesty to affirm the decision of the District Judge, to reverse the decree of the Court of the Judicial Commissioner and to order the appeal to it in the suit on the bond of the 14th September 1880 to be dismissed with costs. The respondent will pay the costs of this appeal.