Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Baboo Bhugwan Doss v. *Baboo Hunnooman Pershad Sahoo and others, from the High Court of Judicature at Fort William in Bengal; delivered June* 13*th*, 1872.

Present:

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THEIR Lordships are of opinion that the decree of the High Court of Calcutta reversing the decree of the Zillah Court cannot be supported.

The Plaintiff's case was *primâ facie* a very simple and plain one. He sued the Defendant upon a mortgage bond, which he annexed to his plaint within a very short time indeed after the bond became due. The Defendant's case was that he had never borrowed any money at all from the Plaintiff, that he never had any transaction which would justify the bond, that he had never put his name to the bond, and that it was an entire forgery. That was the sole issue which he tendered in the court below; that is what he puts in his answer; and that is what he stated in his deposition when he was examined as a witness in his own behalf. Upon this the Plaintiff calls witnesses; he calls the writer of the bond, and all the attesting witnesses; he puts in evidence a mooktearnamah to authorise the register of the bond, and he proves his case as completely as it was possible for a case to be proved by evidence. Unless the whole of that evidence is to be put aside at once as utterly false from beginning to end, the Plaintiff's case

is a case not admitting of controversy. On the other hand there is this: that the Defendant maintained and persisted on oath in the assertion that the signature was not his, and he is found by both Courts, both the first Court and the Appeal Court, in this to have been guilty of deliberate perjury. Moreover, both Courts agree in this, that for the purpose of giving more effect to his false statement, for the purpose of giving more colour to his perjured evidence, he signed his name to his deposition in a feigned hand, in order that upon comparison of that signature with the signature to the bond the Court might be induced to come to the conclusion that that signature was, as he alleged, a forged signature. Both the Courts have arrived at the same conclusion with respect to the Defendant's contention and the Defendant's conduct.

Their Lordships further observe that the Plaintiff, upon being called upon so to do, put in evidence his own books and the entries of the tranactions which were connected with the bond, thus enabling the Defendant to cross-examine the Plaintiff, and to put him to give any explanation of anything which appeared on the face of the books. As far as their Lordships can see upon these proceedings, no attempt was made to cross-examine the Plaintiff with respect to the books, nor was there any suggestion made with reference to them such as has been made at their Lordships' bar to-day by Counsel, that there is something in the books themselves which amounts to suspicion and to evidence of something wrong, from which the corollary is that the bond itself was wrong and a fabrication.

The Judge of first instance came to the conclusion upon the evidence, seeing the witnesses and having an opportunity of seeing the books, that the Plaintiff had established his case, and gave a decree accordingly. From that there was an appeal to the High Court; and there, without any fresh evidence, the High Court agreeing as to the fact that there was a loan for Rs. 6,200,

part of the Rs. 16,200, the sum for which the bond was given, agreeing as to the fact that the signature was a genuine signature, took upon themselves to follow a course which their Lordships are bound to say they have noticed with great surprise and great regret. They took upon themselves, sitting in error from the Court below, not to deal with the case upon the issues and evidence that had been before the Court below, not to deal with the case upon any fresh materials or any fresh evidence that was before them, but on a mere inspection of the document, and a suggestion that there was an alteration apparent in an endorsement made by the obligor of the bond, to frame out of their own minds the following theory, viz., that the bond was originally given in blank, so far as the body of it is concerned, and that the real thing which the Defendant had signed, and intentionally signed, was the marginal portion of it in the Mohajunee character; that he had given that with a limit, limiting it to Rs. 6,200; that then it was filled up by fraud with Rs. 16,200, instead of the genuine Rs. 6,200; and that then, or as connected with that, without the knowledge or assent of the Defendant, there had been a fraudulent alteration of the endorsement, from Rs. 6,200 to Rs. 16,200; and that, therefore, the whole thing was to be treated as a forgery, this being a theory wholly inconsistent with the case ever made by the Defendant himself. It was a case which the Court took upon itself to imagine and to declare proved by the mere inspection of the document. If upon the inspection of the document it had appeared to that Court that there was something on the face of it which required explanation,—and it does seem to some of their Lordships that there is something which might properly have been inquired into,—it was the obvious duty of the Court to have summoned the parties, to have examined the witnesses, and to have put the thing in train for

investigation by the examination and cross-examination of the Plaintiff, by the examination and cross-examination of the Defendant himself, and by the examination and cross-examination of the witnesses. The judges in corroboration of their theory observe that there is a line which appears to have been thrown out of its proper place by the signature of a witness, from which they infer that the bond must have been written after the signatures of the witnesses. But no question was put to the writer of the bond or to the witness, nor was any explanation sought as to this assumed displacement.

Their Lordships cannot but think this to be a grave misapprehension of the duties of a Court, either of first instance or of appeal. It is their duty to act upon the issues and upon the proofs in the case. Of course they must receive all evidence with careful scrutiny; if necessary, with suspicion; but they must, after all, decide the rights of people according to the matters which are proved before them; and it never can be allowed that a Court is, simply upon a suspicion derived from its own notion of what is the habit of the people or anything else, to throw aside the whole evidence and give effect to their mere suspicion as if it were legal proof. This obviously applies with great additional force to a case where the suspicion acted on is wholly inconsistent with the case alleged and sworn to by the person in whose favour they have decided.

Their Lordships think it right to make these observations, because one or two cases have come before them recently in which there seems to have been the same sort of readiness to disregard testimony in favour of suspicion, and because they feel that the Plaintiff and his witnesses in this case have great cause of complaint in this, that they were pronounced guilty of an offence, the fraudulent falsification of a bond, on which they were not heard, and not only without

evidence, but without an allegation. Their Lordships will recommend Her Majesty that this decree be reversed, and the decree of the Zillah Court affirmed; and that the Appellant have his costs of the Appeal and in the High Court.