Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Sri Sri Nilmoni Singh v. *Kirti Chunder Chowdhry, from the High Court of Judicature at Fort William in Bengal; delivered* 28*th April* 1893.

Present:

LORD WATSON.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

In this appeal, the written pleadings in the Courts below do not clearly indicate the real nature of the controversy between the parties. In order to explain their relative positions, it is necessary to advert to certain facts which must now be accepted, because they are either matter of mutual admission or have been affirmed by concurrent judgments.

The Respondent, Kirti Chunder, acted at Purulia as the mouktar and cashier of the Appellant, the Raja Nilmoni Singh, from the 23rd June 1877 until the 10th May 1885 when he resigned his office.

On the 22nd April 1884 a deed of release was executed by the Appellant in favour of the Respondent, which sets forth that one Sita Churn Biswas had, by direction of the Appellant, examined the Respondent's accounts and found that no balance was due, and accordingly exonerates the Respondent from all liability in

respect of all that he had done, and all matters connected with moneys realized and expended from the date of his appointment as mouktar and cashier until the 10th April 1884. Sita Churn was, at that time, the chief clerk in the employment of the Appellant; the deed, which bears the seal of the Raja, is in his handwriting.

In June 1884 Sita Churn was dismissed upon a charge of dishonesty. After a considerable lapse of time, a rumour reached the Appellant to the effect that Sita Churn had been tampered with, and had been induced to report, contrary to the fact, that no balance was due upon the Respondent's accounts. He thereupon summoned the Respondent, who was still in his service, to appear before him on the 8th May 1885. On that occasion the Respondent signed a document addressed to the Appellant, in which he states that there had been no examination or adjustment of his accounts, and professes his willingness to render an account from the day of appointment up to date. The document assigns no reason for its execution, and no consideration was given for it.

On his leaving the Appellant's service, the Respondent at once brought an action to have the writing of the 8th May 1885 declared null and void, on the ground that it was obtained from him by threats and coercion. That suit was, on the 31st August 1885 dismissed by the Deputy Commissioner of Manbhoom, whose judgment was subsequently affirmed by the Judicial Commissioner, and also by the High Court.

This action was brought by the Appellant in March 1886 for a general accounting from the date of the Respondent's appointment in 1877 until the 10th May 1885 and for payment of Rs. 50,000, or such other balance as might be ascertained upon enquiry. The plaint makes no allusion to the release of the 10th April

1884; but it refers in vague and general terms to the document of the 8th May 1885 and the Respondent's unsuccessful attempt to set it aside. In his written statement the Respondent urged various preliminary pleas; but on the merits his main defence was that the Appellant's demand for an accounting for the period antecedent to the 10th April 1884 was excluded by the release of that date. He also pleaded that, inasmuch as his suit to set aside the writing of the 8th May 1885 was dismissed on the ground of insufficiency of proof, the decree in that suit could not be used as evidence against him.

Of nine issues adjusted in order to try the merits of the cause, one only was noticed in the argument addressed to this Board, because the answer given to it constitutes the foundation of both judgments appealed from. It is in these terms:—

"1st. (*a*) Has the defendant (Respondent) rendered to the plaintiff (Appellant) accounts of all receipts and expenditure of moneys stamps and other moveable properties up to the end of 1290 (10 April 1884); and did the plaintiff (Appellant) give him a discharge from all liabilities up to that year inclusive?"

The Subordinate Judge, and, on appeal to the High Court, Norris and Macpherson, J. J., have answered that issue in the affirmative, except in so far as it relates to stamps and documents which came into the Respondent's hands during the period in question, which, in their opinion, were not covered by the terms of the deed of release.

Their Lordships do not doubt that, if an issue in these terms had been submitted to the consideration of a jury, it would have been necessary for the presiding Judge to give them some directions as to the legal construction of the documents bearing upon it, and as to the legal principles by which they were to be guided, all

questions of fact being left to their disposal. It is obvious that the Appellant cannot succeed, unless he is able to show, either that the inferences of fact drawn by the learned judges are manifestly wrong, or that they have erred in law, by misconstruction of documentary evidence, or by misapplication of legal principle to the facts found by them. It cannot detract from the weight of concurrent findings of fact, that different courts, in arriving at the same result upon the same evidence, have not been influenced by precisely the same considerations. A difference of opinion to that extent is only calculated to suggest that the evidence, whatever view be taken of it, must necessarily lead to one and the same inference.

Notwithstanding the ingenious argument addressed to them by Mr. Doyne on behalf of the Appellant, their Lordships have been unable to discover that the answer given to the issue by either of the Courts below is wrong in fact or tainted with legal error. The case presented by the parties respectively, upon their pleadings and proof, though it raised some curious considerations of fact, left little room for legal subtleties. The Respondent resisted an accounting on the ground that his accounts had been examined and passed, and that he had got a discharge. The Appellant, on the other hand, disputed the genuineness of the discharge, and relied upon the ikrar of the 8th May 1885 as showing conclusively that there had been no examination of accounts, and that no release had ever been granted. These were questions of fact, and of fact only; and neither of the parties gave the Courts much assistance in determining them. Neither the Appellant nor the Respondent was examined as a witness, and Sita Churn Biswas was not called by either of them. In the absence of their testimony, both Courts were satisfied that the release of the 22nd

April 1885 was a genuine document; that it had been preceded by a detailed examination of the Respondent's accounts, made on behalf of the Raja; and that the Respondent had used no unfair means to obtain it.

These findings appear to their Lordships to be conclusive against the case set up by the Appellant, and to deprive of all value the document of the 8th May 1885 upon which he relied. It necessarily follows from them that the statements in that document, in respect of which the Respondent professes his willingness to account, are absolutely false. It is true that the Respondent has failed to establish that the document was extorted from him by compulsion; and that he has not explained why he signed it. In petitioning for leave to appeal the Appellant represented to the High Court that, as matter of law, the *onus* was upon the Respondent of explaining the circumstances in which he executed the document, and that he had failed to discharge it. The same argument was pressed here; but, in their Lordships' opinion, that question of *onus* becomes very immaterial when it is found that the release of the 10th April 1884 was valid. In that case, the *onus* is as much upon the Appellant to show why he accepted a document which he knew, or ought to have known, to be a tissue of falsehoods, as upon the Respondent to explain what induced him to sign it.

Their Lordships will humbly advise Her Majesty to affirm the judgments appealed from. The Appellant must bear the costs of this appeal.