Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Rameswar Koer and another v. *Bharat Pershad Sahi* (*Consolidated Appeals Nos.* 31 *and* 32 *of* 1894), *from the High Court of Judicature of Fort William in Bengal; delivered* 17*th June* 1899.

Present at the hearing:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Plaintiff in these suits whose executors have now been placed on the Record as Appellants, instituted two suits against the Defendant now Respondent, for rent of lands held by him under leases granted by her grandfather Run Bahadoor who died in March 1890, or in the Fusli style 1298. The two suits have been tried as one, and the only point in issue has been whether the Defendant is right in asserting that the rent sued for was paid to the owner.

Both suits were begun in May 1892, and in both the Plaintiff claims three years' arrears accruing during the years 1889–1892 of the Christian era, corresponding with 1296–1299 of the Fusli style, which it will be more convenient to use because the greater part of the accounts and oral evidence do so. The Defendant who alleges that payment was made, though at irregular times, and that receipts were given, does not produce any receipts. Their absence is accounted for in the following way.

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The Defendant, who is a man of large property, lives at Chupra. His principal place of business is in Gya some miles distant. He and two others have property and a joint cutcherry in Sumeru also some miles distant both from Gya and from Chupra. In April 1891 one of the Defendant's clerks named Jugdeo was sent by him to Gya with a letter, to obtain and bring back to Chupra Rs. 200 in cash and all the Defendant's receipts. At Gya he found Goneshi the head clerk, Triloke the treasurer, and Janki the tehsildar. They could not furnish the cash, but they handed all the receipts to Jugdeo, variously stated at from 100 to 150 in number, and they sent him off to Sumeru armed with a written order to Nursing the Defendant's gomashta at that place to furnish the money. Nursing was equally devoid of cash, and kept Jugdeo over the next day while trying to raise it. The receipts were handed to Nursing for safe custody, which he considered to be sufficiently accomplished by hanging them up on the wall of the joint cutcherry. In the night a fire occurred, the receipts were burnt, and Jugdeo returned to the Defendant with no receipts and no money.

This story is one of strong improbability. That a fire did occur in the joint cutcherry at Sumeru is proved by the evidence of the police; but it was a slight one, burning a few thatches valued at Rs. 25. The Defendant did not offer himself for examination. He gives no explanation why he should want the receipts. No list or memorandum of them was made when they were handed to Jugdeo. The Defendant's letter which was the justification of the other officials in handing the receipts to Jugdeo is not produced. A letter from Nursing to Janki giving an account of the disaster is not produced. Janki's written order on Nursing is not produced. A letter written from the office at Gya to the

Defendant and sent by Jugdeo is not produced. A letter written by the Defendant to the office at Gya blaming the officials and ordering Janki to communicate with the Raja is not produced. No reason is given for the non-appearance of important letters written on so critical an occasion. And the difficulty which a man in the Defendant's position found in raising Rs. 200 is not intelligible and is not explained.

The circumstance which tells in favour of the Defendant is the silence kept on the Plaintiff's side. Janki the tehsildar through whom the rents were usually paid says "A few "days after I heard of the loss, I went to Babu "Sajewan Lal, the dewan of the Raja, and told "him of the loss and asked for duplicates. He "refused, but said we should get credit (*mujra*). "I was satisfied." He is corroborated by the treasurer Triloke who says "In the letter from "our master about the loss of the receipts, he "said, 'You have been very negligent: go and "'speak to Babu Sajewan Lal and the Raja's "'bukshi.' Janki Singh went. He came back "to say that Babu Sajewan Lal said, 'I will not "'give you duplicate receipts, but you will "'suffer no loss.' Nothing more was done." These statements must be received with the suspicion which attaches to people who have told an almost incredible story. But if false they might most easily be contradicted on the Plaintiff's side. His witnesses were examined some four weeks afterwards. None of them says anything about the asserted application to Sajewan. And Sajewan himself avoided giving evidence alleging illness when cited by the Defendant.

The District Judge of Gya who presided at the trial refused to believe the Defendant's story about the receipts; adding to its intrinsic

difficulties his own dissatisfaction with the manner in which the witnesses Janki and Triloke answered some of the questions. The High Court accepted the story principally on the ground that has been mentioned, viz., the Plaintiff's failure to meet the assertions of Janki and Triloke. Their Lordships must say that they share the incredulity of the District Judge and if this were the only point in the case they would have little hesitation in deciding for the Plaintiff.

The Defendant offers evidence of payments by his servants who made them and by the books they kept. The District Judge rejects all this evidence in somewhat summary fashion. The books he says quite rightly are not by themselves sufficient; but he is in error when he says that Janki's assertions of payment are vitiated because the witness had refreshed his memory from the books. He is in fact so impressed with the fiction about the receipts that he discredits the rest of the case. It is true that any Judge disbelieving that story must view very warily other evidence coming from the same quarter. But that does not exonerate the Court from weighing whatever evidence has actually been tendered and the mode in which it has been met. It is unfortunately by no means an unfamiliar occurrence in Indian Courts of Justice that parties should concoct a false story to help their case, and yet on the main point of the case be right. The main point here is payment or no payment. Written receipts for payments are important but by no means necessary as proof; nor are they of the nature of primary evidence the loss of which must be shown in order to let in secondary. Whatever the true story about the receipts is, it may be quite compatible with the fact that the money has been paid.

According to the ordinary course of business in the Defendant's office the rents were paid into the Raja's treasury by Janki the tehsildar. Janki, speaking in round numbers, asserts that large payments were made during the years to which the dispute relates, and he refers to the office books for particulars. Triloke the treasurer says that the payment for those years has been made in full. "I can remember that each item "was sent according to the accounts." And again "Since the institution of the suit I have "examined the books, looked at all the items, "and totalled them. I have also done this before." These books were not subjected to any detailed examination nor were the officials examined by the Plaintiff as to any item. The District Judge says they are of such a nature and so kept as to give no feeling of security, but no reason is given for this opinion, and from the judgment of the High Court it does not appear to have been pressed there. Their Lordships do not find any suggestion that the payments shown by the books are less than the whole rent. The case has been argued here as it appears to have been in the Courts below, on the footing that if the Defendant's evidence is genuine it covers the Plaintiff's claim.

There has been a keen controversy with respect to two receipts marked G1 and G2. They were given in the year 1299 by the Plaintiff's dewan Sajewan for small sums, little more than Rs. 251 in the aggregate, then paid by Janki as rents for certain mouzas. The controversy is whether those sums were paid for arrears due in 1295 or for arrears due in 1298. If the former, they would favour the Plaintiff's contention that nothing had been paid since 1295: and if the latter, the Defendant's contention that all previous rent had been then

paid. They are written partly in Mahajuni, partly in Persian, and partly in Kaithi, the passages in the two latter languages being identical in expression. The year is stated in Arabic numerals as well as in words, and alterations have been made so as to make it doubtful whether the last numeral is 8 or 5. The District Judge thought it was 5 altered by the Defendant to look like 8. The High Court thought that the proper reading is 1298.

It would be idle for their Lordships to attempt to decipher documents which they have not seen, written in characters and words which they do not know. Mr. Justice Ameer Ali, who is familiar with Arabic and Persian, has examined them with great minuteness. The Appellant has given them no materials for questioning his conclusion, even if they were competent to do that. So far as there is any evidence extraneous to the documents it favours the conclusion of the learned Judges.

First, No reason is suggested why the Defendant should pay a debt the recovery of which was barred by time in 1299.

Secondly, Kali Churn, a wasil-baki-nuvis of the Plaintiff, speaks to certain payments made for the Defendant on account of rent and cesses during the years 1295–1299 in the presence of the witness and entered by him in his wasil-baki. The last entry is "1299, Rs. 251 on the towzi day." There is no doubt of the identity of this sum with those for which the G receipts were given. The towzi day is, their Lordships understand, the day of accounting, *i.e.*, the day on which the payment is due. If then these two sums were paid on the very day on which rents for the mouzas concerned fell due, that lends probability to the assertion that they were tendered on account of those rents.

Thirdly, there is the evidence of Janki on this point as follows:—"I took the money to "Tekari for G1 and G2. I did not say I paid "for any particular year. But when G1 and "G2 were given to me, I said, 'Why are they "'not for 1299?' The dewan Sajewan Lal said "they were given for 1298, because that year was "in arrears. No account was made at the time." This evidence, like so much else that is alleged for the Defendant, is very extraordinary. But nothing could have been easier than a contradiction by Sajewan, who kept out of the way.

Fourthly, before the High Court entries in the Plaintiff's books were referred to for this purpose. She has two sets of books one kept in Mahajuni and one in Persian. In the Mahajuni book no mention is made of the year for which the money was paid. In the Persian book it is written "on account of arrears for 1295"; but Ameer Ali J. says that these words appear to be written in a different ink and at a different time. These entries are not discussed by the District Judge and apparently were then buried in the voluminous books. Thakoor who keeps the Plaintiff's Persian book, and Buldeo who keeps her Mahajuni book, were both called by her. They produced their books, but they did not refer to this item nor indeed to any other.

Their Lordships do not doubt that the payments were tendered for 1299 and were accepted for 1298. Of course this is not conclusive as to the payment of all previous rents, but it aids the evidence in favour of that conclusion.

Some of the Plaintiff's books (there appear to be others *e.g.* one called the Raj book) ranging over five years were put in by her witnesses. The District Judge has put a note against the list of them, thus "Relevant extracts will be

made and placed with this Record." That however was never done. So the relevant entries have not been extracted. The District Judge himself does not mention one of them. Trevelyan J. in the High Court observes with some severity on the useless condition of the accounts so tendered in the lump. Their Lordships know nothing of them except the entries just referred to in connection with the G exhibits.

The wasil-baki which has been referred to in the same connection was not put in. The writer stated some items taken from loose sheets. They show substantial sums paid by the Defendant for rent during the disputed period. *Primâ facie*, though the payments deposed to by this one witness fall very far short of the rents, they are inconsistent with the assertion of the Plaintiff that nothing was paid during that period. Neither Court observes on this evidence, and the learned Counsel at the Bar were unable to explain it. Their Lordships hesitate to lay stress on that which, though obvious, has not been noticed, and against the use of which there is presumably some reason. But as unexplained, the Plaintiff's wasil-baki appears to run counter to her case.

Now the Plaintiff asks this Board to reverse the decision of the High Court. She gives good reason for holding that such part of the Defendant's case as relates to the missing receipts is not worthy of belief. But on the essential point, that of payment, the Defendant offers better evidence. His amla testify to payments made by them, and the books kept by them give them support. In one instance, though the payments are small, they produce receipts. Those payments come at the end of the disputed period, and they afford a probability that the earlier ones which are asserted to have been made were made.

The evidence is not what it might be nor what it would be reasonable to expect from a man in the Defendant's position who keeps a large amla to manage his property. If contravened, it might perhaps have been found unworthy of belief. But it cannot be denied that the Defendant does give evidence of payment sufficient to throw back again on the Plaintiff the onus of proving that her rents are still due.

What has been done on the part of the Plaintiff who had ample time to consider the Defendant's evidence? Trevelyan J. says with truth that the evidence on this part of the case is entirely one-sided. We do not find even the bald assertion that the sums claimed are due, or that the rents which fell due remain unpaid. The nearest approach to such an assertion is that of the Mahajuni-book-keeper that he enters in the books all the payments made to the Raj by the Defendant. We do not know the contents of these books. It is true that if the Defendant's case had been efficiently conducted, they would have been ransacked to find evidence of payment. But the Defendant's neglect does not exonerate the Plaintiff from doing what is requisite on her part. Her amla might have fastened on the several items of payment alleged by the Defendant's amla, have denied the receipt of them, and have pointed out their absence from the places in her books where they must have appeared according to regularly kept accounts. But the Plaintiff goes on relying on the leases, which only show when the rents fell due. Those of her amla who are called are silent on the crucial point of payment, and the most important of all, the dewan Sajewan, who is specially challenged on some important points, not only is not brought foward by the Plaintiff, but keeps out of the way of examinationwhen called for by the Defendant.

It is consistent with the Record as placed before this Committee that the alleged payments may have been made and yet not one of the Plaintiff's witnesses have been guilty of giving false evidence.

To their Lordships' minds the case is one of the most obscure and unsatisfactory character, but they are clear that no sufficient grounds have been assigned for reversing the decrees of the High Court. They will humbly advise Her Majesty to dismiss the Appeals, and the Appellants must pay the costs.