

**Babu Anand Behari Lal** - - - - - *Appellant*

*v.*

**Messrs. Dinshaw & Co. Bankers Ltd., Lucknow** - *Respondent*

FROM

**THE CHIEF COURT OF OUDH AT LUCKNOW**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 25TH OCTOBER, 1945

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*Present at the Hearing:*

LORD THANKERTON

LORD GODDARD

SIR JOHN BEAUMONT

*[Delivered by LORD THANKERTON]*

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The present appeal arises out of an application by the present appellant for permission to proceed in the liquidation under Section 171 of the Indian Companies Act with an application in which he or his predecessor applied to have his name substituted for that of the respondent Bank in a preliminary mortgage decree.

The whole warrant for that application was based on an assignment alleged to have been made by the respondent Bank in favour of the appellant prior to the date of liquidation. That document, on the face of it, shows that it was not signed by any director or official of the Bank. It shows, further, as far as one can see, no signature on behalf of the Bank.

Issue 5, which has been considered and as to which concurrent findings have been made by the courts in India, raises a question of the Authority of Balakram to act on behalf of the Bank. That was based on an alleged power of attorney by the Bank in favour of Balakram. The principal of the power of attorney has not been produced and its disappearance, or the impossibility of producing it in the view of the courts in India has not been satisfactorily proved. Therefore, the conditions have not been fulfilled under which section 65 of the Indian Evidence Act provides that secondary evidence may be admitted.

Further, it may be added that the secondary evidence relied on is an extract of an alleged power of attorney purporting to have been found in the Bank books of the Imperial Bank. It is not attempted to prove who the writer of that extract was and the writer is not produced to say it was a correct copy. Even if it was admissible it is not proved, and as has been found by both courts in India, it is not proved that Balakram had authority from the directors and even assuming under the Companies Act they would be entitled to delegate this particular authority their Lordships do not trouble with the evidence of Balakram because it is inconsistent and unreliable, clearly.

Sir Herbert Cunliffe on behalf of the appellant sought to raise another issue. The issue as their Lordships understand it is based on ratification or estoppel. Both these issues are questions of fact which were not in issue at the trial, and are raised for the first time before their Lordships. It is too late to raise any such question at this stage.

Accordingly it is unnecessary to deal with the other questions arising in the case because on these concurrent findings the justification for the application had disappeared from the case. The result is that the appeal must be dismissed, the judgment of the court below be affirmed and the appellant must pay the respondents' costs.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council

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BABU ANAND BEHARI LAL

v.

MESSRS. DINSHAW & CO. BANKERS  
LTD., LUCKNOW

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Printed by His Majesty's STATIONERY OFFICE PRESS,  
DRURY LANE, W.C.2.  
1945