

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Dheeta Hurruckman Singh v. Wodoy Chand  
Pyne and another, from the High Court of  
Judicature at Fort William in Bengal; de-  
livered 10th December 1873*

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Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

THIS is an action brought for the recovery of damages for the wrongful taking or, as it may be called by English lawyers, conversion of a certain number of logs of timber.

The Principal Sudder Ameen found for the Plaintiff. That decision was reversed by the High Court.

In order to make the case intelligible, some facts require to be stated. It appears that the Nepalese Government is in the habit of felling timber in their woods, of sending it to a station called Bhoosee, on or near to their frontier, and of conveying it down the Kamlah, a stream which communicates with the Ganges, and selling it to timber merchants. Next to Bhoosee is a station called Burraer, and next to that is a station called Chirryamarah. The Plaintiff was a merchant in a very large way of business, having extensive establishments in different parts of India. Among other things, he was a timber merchant. His case was, that

he bought a large lot of timber, between 3,000 and 4,000 logs, from the Nepalese Government, in the year 1860; that they were sent to Chirry-amarah, and that they had there remained in his possession until the time of action brought, with the exception of certain portions of timber, which he accounted for in various ways: some had been sunk and lost, some had been sold at Chirryamarah, and some had been sent down to Calcutta. The residue which he claimed was 1,260 logs, which were at Chirryamarah, and which are alleged by his witnesses to have been his and in his possession; and further, it is alleged that no other person had any timber at that place at that time.

This case of the Plaintiff, Dhurun Narain, was supported by his own evidence, and it is not altogether immaterial to observe that the Principal Sudder Ameen expresses himself as satisfied, from the demeanour and conduct of this witness, that he was telling the truth. It was confirmed by his manager, the person who brings the action in his name, and for him, and by several other witnesses. Among others, there are witnesses who prove that they were resident on the spot; that they were in the habit of acting for him and keeping his books, and they give evidence of the actual contract entered into by the Plaintiff with the Nepalese Government, which is dated in September 1860, whereby it appears that he purchased a lot of 3,464 large logs of timber, together with some smaller pieces. These witnesses depose that these timbers came down from Nepal, and the challans are put in, which are the invoices, the documents which would be delivered to the boatmen who carried them down, and the receipts are put in of these various lots, which would be the documents given by the agents of the Plaintiff to the boatmen upon the delivery of

those lots. So this lot is satisfactorily traced down to Chirryamarah. The amount which actually came down to Chirryamarah was 3,453, or about that. These witnesses also prove that this quantity was diminished in various ways, that a certain number of logs were sunk, that a certain number were sold at Chirryamarah, and a certain number sent down to Calcutta, reducing the amount, not precisely, if the mere oral evidence is relied on, but approximately to that which the Plaintiff claims, in fact, to somewhat more than the Plaintiff claims.

But the Plaintiff's case does not stop there. He puts in his books from 1860 to the time of action brought. They occupy a vast number of pages, and it may be that the printing of them at length was unnecessary. The effect of them would appear to be, to say the least of it, in a great degree confirmatory of the oral evidence. A summary is put in, which perhaps of itself would not be distinctly evidence, although it is spoken to by a witness who was cognizant of the transactions of his master, the Plaintiff; but on looking through the various columns of this account, their Lordships have come to the conclusion that, on the whole, though not precisely in every detail, it does support the case made on the part of the Plaintiff by his oral evidence. It further appears that all this timber, according to the Plaintiff's statement, had his own mark, a peculiar letter, which is described as a "g" in the Nagre dialect.

Their Lordships have to observe that this case of the Plaintiff appears to them, assuming the witnesses to be believed, and the document not to be forged, a very clear, and, they may add, a conclusive case.

But now comes the case of the Defendant. He also dealt in timber, and his case is in substance this: that one Mookerjee had dealings in timber with the Nepalese Government: that the persons who acted principally on behalf of the Nepalese Government were, first, a person called Colonel Bukhtawar Sing, and secondly, a person called Lieutenant Gouree Dutt: that Mookerjee had various transactions with these persons; that he had bought a certain quantity of timber, but was unable to pay the necessary deposit, and thereupon they declined to deliver the timber; that he advanced money to Mookerjee and put himself in the place of Mookerjee, and that he arranged with the Nepalese Government for the delivery to him of a certain lot of timber (which may be stated approximately as 1,500 logs), some to be delivered at Chirryamarah and others at the intermediate station of Barraer. His case is further this: that he received letters from Bukhtawar and Gouree Dutt, the effect of which is that this timber would be delivered to him. He does not say that any special lot of timber which could be ear-marked was agreed upon between them, but that they were under liability, which they themselves acknowledged, to deliver to him 1,500 logs. Three letters have been put in to prove this,—two from Bukhtawar and one from Gouree Dutt,—which the Principal Sudder Ameen regards as not genuine. Without deciding that point, it may be enough for their Lordships to say that they do not find them to have been satisfactorily proved. The Defendant was not called as a witness for himself as the Plaintiff was for himself; nor was his brother,—a co-defendant on the record, who appears to have acted for him a good deal in his business,—called. The

writer of the letters, Bukhtawar, was not called, nor Gouree Dutt, on the side of the Defendant. Nor was direct evidence given even of the handwriting of those letters. Their Lordships, therefore, so far concur with the Principal Sudder Ameen as to hold that these letters have not been satisfactorily proved. But further, the Plaintiff says that there was another document, whereby Budhtawar and Gouree Dutt directed two men, one of the name of Narain Mollah, and the other of the name of Tunga Mollah, who were custodians of the timber at the two stations Burrear and Chirryamerah, to deliver all the timber at these stations to the Defendant. It may be here observed that there does not appear to have been more than one lot at each of the stations. It is not the case of the Defendant, "You, the Plaintiff, had a certain quantity of timber at the stations and I had another," but "whatever was at the stations," the Defendant says, "is mine;" "whatever was at Chirryamerah" the Plaintiff says "is mine." Now, with respect to this direction from Gouree Dutt, which is alleged, the letter containing it is not put in, although several witnesses speak to its contents. Gouree Dutt is not called by the Defendants for the purpose of proving this letter, but Gouree Dutt is called by the Plaintiffs, and denies having written any such letter. It is to be observed that Gouree Dutt being in the box, and being called for the Plaintiffs, not a word is asked him on cross-examination with respect to the letter which he is said to have written to the Defendants, nor with respect to the letters, of which he must have been cognizant if they were genuine, written by Bukhtawar to the Defendants. The substance of the Defendant's case is:—"I bargained with the Nepalese Government for 1,500 logs of timber, and the Nepalese Government directed the delivery

“ to me of this lot of timber amongst others.”

What timber he took from Burraer station is not material to the present question, the Plaintiff only claiming that which lay at Chirryamarah.

Their Lordships are of opinion that the Defendant has not satisfactorily proved that in point of fact Bukhtawar and Gouree Dutt, on behalf of the Nepalese Government, did cause delivery of the timber to be made to him at this station of Chirryamarah. But assuming that they did, if the Plaintiff's case be true, they would have no right to do it; the timber was his, and neither Bukhtawar nor Gouree Dutt could deal with it. The Defendant's case, therefore, necessarily assumes that the whole of the Plaintiff's case is false and fabricated, and the counsel for the Defendants have not shrunk from that issue. Their suggestion is, that after the order to deliver this timber to the Defendant, and after his taking it away, a dispute arose between him and the Nepalese authorities with reference apparently to a very small matter, the amount to be paid for its carriage from some point to some other point, and that, in consequence of this dispute, Bukhtawar and Gouree Dutt caused this false action to be brought; that they put up the Plaintiff to make an entirely false claim, and that the Plaintiff lent himself to their views. It is very easy to suggest, but not so easy to prove such a case as this, against which there are strong probabilities. No sufficient motive can be suggested why the Plaintiff, a man of considerable wealth and position, and apparent respectability, should lend himself to so gross a fraud. There is nothing upon the face of the documents which have been put in to show that they are forged, as the case of the Defendants must assume them to be; and there is nothing, as far as their Lordships are able to see, to

impeach the oral evidence of the Plaintiff. It may be observed that there are many strong probabilities against this supposed fraud and conspiracy. Among them may be mentioned, this:—The quarrel took place after the timber had been carried away by the Defendant; according to the Defendants' case, that timber all belonged to Bukhtawar and not a stick of it to the Plaintiff. If so, how came the Plaintiff's mark upon it? That is a difficulty which the Defendant has not attempted to meet. It appears to their Lordships that no sufficient ground has been shown for the imputation (which is a necessary part of the Defendant's case) that the case of the Plaintiff has been altogether fraudulent and got up; on the contrary, as far as their Lordships are able to judge, they agree with the Principal Sudder Ameen in regarding that case as true and very clearly proved.

That being so, their Lordships are of opinion that the judgment of the Principal Sudder Ameen was right, though it is not necessary for them to concur in every observation which he made.

But their Lordships cannot help making one or two observations upon the judgment of the High Court.

Their Lordships regret that they are unable wholly to understand that judgment, which appears to have been given under some misapprehension both of the questions to be tried and of the effect of the evidence. The High Court observed, "We may set aside the evidence of witnesses No. 1 and 10 altogether, for they do not, to any personal knowledge, know of the forcibly taking of the timber in question."

The witnesses No. 1 and 10 respectively are Bindoo Lall Deeta and Major Nowan Sing, the two most material witnesses for the Plaintiff,

who prove, in substance, this:—that the timber in question was bought on behalf of the Plaintiff; that it was brought down from Nepal; that portions of it were disposed of, and that what remains was in the possession of the Plaintiff; witnesses whose evidence alone, if uncontradicted, would have proved a conclusive case for the Plaintiffs. Their Lordships are not able to understand the grounds on which the High Court dismisses this evidence as undeserving of consideration. The reason given by the High Court is: that they do not depose to the forcible taking away of any of the timber in question. This reason appears to their Lordships to be based on a misapprehension, for if they prove that this timber was the property of the Plaintiff, and, further, that it was in his possession, then there is no question whatever that the Defendant took it away. He admits that he took it away, alleging that he had a right to do so; and whether he took it away with more or less force is quite immaterial to the present action. The High Court, after making some further remarks on the evidence, proceed to observe:—“The first thing that  
“ strikes us on reading and considering this  
“ evidence is, that if the plunder lasted for the  
“ number of days stated by the witnesses for the  
“ prosecution, the steps taken by the party in  
“ charge of the timber, and by the Nepalese  
“ authorities, were wholly inadequate. The  
“ plaint, too, shows that the first attempt to  
“ carry off the timber was made on the 31st  
“ May 1864,” and then they go on to say:—  
“ Before this Court can give a decree for the  
“ large sum claimed by the Plaintiff on the  
“ allegation that the timbers were forcibly  
“ carried off by the Defendants, we must be  
“ thoroughly satisfied, not only by the evidence



“ but by the probabilities of the case, that the  
“ Defendants did carry off, as alleged, the timber  
“ in question.”

There appear, indeed, to have been some proceedings in the Criminal Court relating to the alleged forcible taking off of these goods, to which allusion has not been made, because they appear to their Lordships immaterial to the present enquiry. The only possible bearing they can have upon it is to suggest the inference that if the Plaintiffs were really in possession of the goods they would not have submitted to their being forcibly taken away; that is an inference which might possibly be suggested, but which by no means outweighs the very positive and clear evidence which has been given of the possession by the Plaintiffs.

The High Court go on further to say: “ We  
“ might stop here and, without going into the  
“ Defendant’s case, holding as we do that the  
“ Plaintiff has failed to prove the case put by  
“ him, have dismissed his case without further  
“ comment.” Their Lordships are quite unable to concur in this view, for it appears to them that, taking the Plaintiff’s evidence to be true (which they see no sufficient reason to doubt), his case is not one which could be dismissed, but one which is conclusively established. The High Court further observe, “ Taking  
“ therefore the case as the Plaintiff himself  
“ puts it, we are of opinion that he has wholly  
“ failed to prove the forcible taking of the  
“ 1,260 logs of wood by the Defendants.” Their Lordships have only to repeat that this that this last is an immaterial issue. Supposing he had proved his property in and possession of the goods, the amount of force used by the Defendant in removing them (which he admits himself to have done) was quite immaterial. To that question the Court appears to have

devoted a good deal of consideration, but their Lordships are unable to find in the course of the judgment that the Court have distinctly determined the real question in the cause, namely, whether the Plaintiff had proved a case of property and possession of the goods, and if so, whether the Defendant had displaced it by showing a better title in himself.

Under these circumstances their Lordships will humbly advise Her Majesty that the decree of the High Court be reversed; that the judgment of the Principal Sudder Ameen be affirmed, and that the Appellants have the costs below and of this Appeal.