Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Dinomoyi Debi Chowdhrani v. *Roy Luchmiput Sing Bahadoor, from the High Court of Judicature at Fort William in Bengal; delivered 3rd December* 1879.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS suit was brought by Roy Luchmiput Sing Bahadoor, who is a banker carrying on his business at Rungpur, and having a branch bank at Baloochur in Moorshedabad, against a lady of the name of Dinomoyi Debi Chowdhrani, to recover a large sum of money which is claimed as being due upon the balance of a banking account. This balance represents principal due up to the 29th Assin 1276, Rs. 12,402, and interest from that date to the 22nd Assin 1280, Rs. 5,548, making altogether Rs. 17,950. The Plaintiff joined, as Defendant in the action, Ram Tarun Hazra, who was in the service of the first Defendant and whose position will be hereafter referred to, and also, as a third Defendant, Rhada Churn Banerjee, her son-in-law and her dewan. There seems to have been no ground whatever for joining these two persons, for they acted as agents only in the transactions which formed the subject of the action, and were in no way personally liable to the Plaintiff. They may be considered as being out of the suit. The defence made to this claim was first, a denial that the balance claimed was due, and secondly, that

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if that balance was at any time due, the right to recover it was barred by the Statute of Limitations, No. 9 of 1871. It seems that Ram Tarun Hazra was what is called a jummanuvis, a kind of accountant in the Defendant's service; but undoubtedly he had mooktearnamahs or am-mooktearnamahs from the Defendant, for the lady herself, who was examined on the part of the Plaintiff, admits that they were given to him. However, they have not been produced. It is unquestionable also that Rhada Churn acted as dewan of the lady. It seems that she had on one or two occasions deposited considerable sums with the Plaintiff on deposit, and had also left with him on deposit valuable property in gold and silver; but on the other side moneys were drawn out from time to time on her account. A large sum of money, Rs. 17,000, was drawn from the bank to pay for an estate which she purchased. The items of the banking account were disputed in the Court below, particularly with regard to that sum of Rs. 17,000, and another sum of 16,000 rupees, which, though it was admitted to have been taken out for the purchase of this estate, was said to have been again paid into the bank. The banking account was managed, and the sums drawn out by Ram Tarun Hazra, who seems to have been the principal actor in the transactions with the bank, though Rhada Churn interfered in them, and must have known what was the state of the account from time to time. It seems that the account began in 1272, and was finally closed, so far as regards the drawing out and paying in of money, in 1274.

Four accounts altogether have been referred to, which bear the signature of Ram Tarun Hazra. The period of adjusting these accounts appears to have been in the month of Assin, treated

as the beginning of the Commercial year. The accounts were kept both in Hindee and Bengali books. The dates spoken of in this judgment are those in the Bengali books. The last account (the third) which was adjusted —before we come to the adjustment and hat chitta which are in question in this suit— was adjusted on the 10th Assin 1275, which corresponds with the 25th September 1868. No other account was adjusted until that in question, and upon the adjustment of which the hat chitta in dispute was said to be given in 24th Assar 1277, corresponding with 7th July 1870. Therefore this account, instead of being adjusted as in ordinary course it would have been in Assin of 1275, was not adjusted until the 24th of Assar 1277; and it was adjusted, not at Mahigunge, where the former accounts had been settled, but at Baloochur in Moorshedabad. It is said that the reason of the delay and of the settlement having taken place at Moorshedabad, was that there had been some altercation about the amount of interest which should be charged upon the balance due. The two Judges of the High Court, Mr. Justice Kemp and Mr. Justice Ainslie, differed in the view they took of the truth of this mode of accounting for the delay. Mr. Justice Kemp gave credit to the statement of the Plaintiff's witnesses who said that the cause of the delay was the dispute about the interest. Mr. Justice Ainslie thought that the Plaintiff's story with regard to it was a mere pretence. It is unnecessary, in their Lordships' view, to determine which of the learned Judges is right in his view of the evidence on that point. It is enough to say that this settlement was made out of the ordinary course, being made nine or ten months after the usual time for adjusting the account, and at an unusual place.

With regard to the first question, whether the balance which appears upon the accounts was at any time due from the Defendant to the Plaintiff, their Lordships, during the course of the argument, intimated that they did not find sufficient grounds for disagreeing with the judgment of the High Court upon that point. They desire to give no further expression of their opinion than to observe that the learned Judges had materials and evidence before them which they might fairly and properly consider, and their Lordships are not prepared to disagree with their judgment.

The question remains whether the debt is not barred by limitation. The last settlement of account, which was regularly made and adjusted by Hazra, took place on 10th Assin 1275, nearly five years before the suit. In order therefore to take the case out of the operation of Act No. 9 of 1871 it is necessary for the Plaintiff to establish that there has been an acknowledgment either by the Defendant herself or by an agent of hers within the period of three years, which is the period of limitation applicable to the present claim. The 20th section of Act 9 enacts: "No promise or "acknowledgment in respect of a debt or legacy "shall take the case out of the operation of this "Act unless such promise or acknowledgment "is contained in some writing signed before the "expiration of the prescribed period by the "party to be charged therewith, or by his agent "generally or especially authorised in this "behalf." The case of the Plaintiff is, that an acknowledgment was signed by Hazra, and that he, at the time he signed it, was the Defendant's agent, either generally or especially authorised in that behalf. The case is put in two ways: first, that his general authority to act for the lady continued up to the time when he signed the documents to be presently referred to; and

secondly, it is said that there is evidence of a special authority given to him by her to make these acknowledgments.

The account relied on is alleged to have been adjusted by Hazra on the 24th Assar 1277 (the 7th July 1870). This account was entered in the Plaintiff's khata for the year 1275. It is extremely simple. It states the previous balance up to 10th of Assin 1275, Rs. 11,108, and the only new item is this:—"On account of Chati game, Rs. 2." Then interest is added from the 11th of Assin 1275 to the 29th Assin 1276, making a total of Rs. 12,402 8 annas, which is the sum mentioned in the plaint. On the same day the memorandum, called the hat chitta, stating the account in a similar manner, was signed by Hazra. It contains the addition, "Interest will be paid at Rs. 1 per cent. per mensem."

The extent of Hazra's authority is not shown by any document. The Defendant, who was called as a witness for the Plaintiff, stated that she gave ammooktearnamahs to Hazra; but they have not been produced, nor is there any evidence of their contents. It was the duty of the Plaintiff, if he relied upon those ammooktearnamahs, to produce them. It appears that one at least was registered, and the Plaintiff might have produced a copy. No effort was made to obtain the original. Hazra might have been served with a subpœna to produce it: and their Lordships, on the evidence before them, see no reason to suppose that Hazra was otherwise than favourable to the Plaintiff. If he really had authority, and if he had given these documents acting within that authority, it was his interest to establish those facts; and from his being found in communication with the Plaintiff, and also from the Plantiff having produced documents which he could only have obtained from Hazra, there is reason to suppose

that he was, to say the least, well disposed to the Plaintiff and to the present claim. Though the written authority has not been produced, their Lordships think enough appears upon the evidence to shew that he had authority, at one time, to borrow money; indeed his acts in that respect were ratified by the lady herself.

Then comes the question whether the authority which he may once have had was continued down to the time (the 7th July 1870) when the acknowledgments in question were signed. In the absence of the ammooktearnamahs the answer to that question must depend on other evidence.

It is proved that in Bhadro 1276 Hazra left Rungpur and the residence of the Defendant and went to his own home in Moorshedabad, and he never returned to Rungpur. That was 10 or 11 months before the signature of these acknowledgments. The fact that he left the Defendant's service and did not return is proved conclusively by a great number of witnesses. The Defendant herself gives this account of it: "Hazra having "taken a month's leave, went home and never "returned, and he performed no business on "my behalf. After that the said Hazra was "no longer my servant." Another witness, Shoshodhur Chaki, says: "In the month of "Srabun or Bhadro 1276, Ram Tarun Hazra "went to his house at Rampara in Moorsheda-"bad. He has not come back since then. He "did not get his salary after he had gone "away, nor did he perform any business." The same facts are stated by 10 or 12 witnesses called on the part of the Plaintiff. Their evidence is nowhere denied or questioned, and is supported, if support were necessary, by the witnesses called on behalf of the Defendant. Whether when he first went away he was discharged or not is immaterial. In the absence of evidence to the contrary, it is certainly to be inferred from the facts stated that his service had come to

an end. If so, it is clear that he could have no general authority to sign these acknowledgments on behalf of the Defendant.

Then it is said that the Plaintiff had no notice that Hazra's authority had been put an end to, and therefore that as far as he is concerned it must be deemed to have continued. Formal notice in cases of this sort is not required. It will be enough if the Plaintiff knew of the agent's authority having ceased. That would depend upon his knowing whether Hazra had quitted the Defendant's service, and that his authority was in that way revoked. Their Lordships find that Raout Mull, who was the Plaintiff's gomashta, and apparently one of the managers of the kooti at Mahigunge, was aware of the fact, and it is nowhere denied that the circumstances under which Hazra had left, and continued to be absent, were known. Hazra had gone to his own country in Moorshedabad. Raout Mull says that he knew he had gone there, and Hazra is afterwards found to be communicating with the Plaintiff upon this suit. The inference to be drawn from all the facts of the case is, that the Plaintiff or his manager must have been aware of the situation in which Hazra was, and that his connexion with the Defendant had come to an end. If that be so, the Plaintiff's case fails, so far as it depends on Hazra's general authority from the Defendant to make the acknowledgments at the time at which he made them.

It is then contended that the Defendant gave a special authority to Hazra to make the very adjustment which constitutes the acknowledgment in question. If that had been made out, nothing of course could have been plainer than this case would have become. What is relied on to establish the special authority is a letter alleged to have been written by the Defendant

herself. The evidence of it is to be found in the deposition of Raout Mull, and his statement is this: "Afterwards, in the year 1276, the "Hazra went to his country in Zillah Moor- "shedabad. Dinomoyi wrote a letter saying, "'You have calculated interest at too high a "'rate; for this reason the account cannot be "'adjusted here.' The Hazra is in Moorshe- "dabad; he will go to the Plaintiff, and when "the Plaintiff reduces the rate of interest the "account will be adjusted." An inquiry in the course of the examination of this witness was made by the Defendant's Counsel as to where letters were kept, and he says this:— "The letters that used to come when I was "present, I used to make over to the serishtadar "of the kooti. They used to remain in "the kooti with the gomashta. The letters "that used to come to the gomashta remained "with him." And then again he says:—"The "said letter was written after the karbar was "closed. I do not remember the year. Dinomoyi "wrote at the commencement of the Nagri year "1926, or Bengali year 1277, about the adjust- "ment of the accounts in Moorshedabad. I do "not remember whether the said letter was to "the address of the Plaintiff, or of me, or of the "gomashta. I do not remember whether it con- "tained the seal and signature of Dinomoyi "or the signature of Bahda Churn in bakalum. "I received the said letter through the burkun- "dar of the Plaintiff's kooti. The said letter "used to remain in the Plaintiff's serishta. I can- "not say where it is now." This witness could not say where it was at the time he was speaking, for he was no longer in the service of the Plaintiff, having left it for some time. This important letter, which would be evidence of specific authority having been given by the lady to Hazra to adjust the accounts, was not produced,

and no attempt was made to account for its non-production. The learned Judges of the High Court do not seem to have recognized the weight of the objections which arise from the non-production of this letter, and the want of any proper explanation to account for its absence. All Mr. Justice Kemp says of it is this: "It is "to be regretted that the Plaintiff has not been "able to file the letter from the lady, the "Defendant No. 1, to this firm." The learned Judge assumes in that sentence that he was not able to file it, but there is no evidence that he was unable to do so. If such a letter existed, it should have been in his serishta. If any accident had occurred to prevent its production, it might have been shown.

Their Lordships therefore cannot agree with the Judges of the High Court in thinking that a special authority to Hazra to make the acknowledgments in question was sufficiently proved. It is a cardinal rule of evidence, not one of technicality, but of substance, that where written documents exist they shall be produced as being the best evidence of their own contents. Nothing is more dangerous than to allow parol evidence to be given of what they are alleged to contain when there is reason to suppose that the documents themselves exist. If a letter exists, it may contain something very different from that which the witness represents to be its contents. When an important letter is not produced, and no explanation is given for its nonproduction, an inference not unnaturally arises, either that the letter, if written, does not contain that which it is represented to contain, and therefore that it would not suit the purpose of the party to produce it, or that no such letter ever existed.

Their Lordships therefore think that the parol contents of this letter were not properly received

in evidence; and they further think, independently of the technical point of its admissibility, that the evidence does not afford trustworthy proof of the contents of the supposed letter. It is to be observed that there is no evidence that the adjustment said to have been made in pursuance of it was ever communicated to the Defendant.

On these grounds their Lordships are of opinion that Hazra's authority, whatever it may have been, did not continue to the time when these acknowledgments were signed, and that the Plaintiff has failed to prove any special authority from the lady to Hazra to make them.

Their Lordships must humbly advise Her Majesty to reverse the judgment of the High Court, and to affirm the judgment of the Subordinate Judge, and to direct that the Plaintiff do pay the costs of the litigation in India. He must also pay the costs of this Appeal.