*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hurri Churn Bose* v. *Monindra Nath Ghose, from the High Court of Judicature at Fort William, in Bengal; delivered 3rd December* 1891.

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Present:

LORD HOBHOUSE.
LORD MORRIS.
SIR RICHARD COUCH.
MR. SHAND (LORD SHAND).

[*Delivered by Lord Morris.*]

IN this case an action was brought by the Appellant against the Respondent for the recovery of a sum of Rs. 10,998. The Respondent appears, at the time that the first of the transactions herein-after mentioned occurred between him and the Appellant, to have been a young man under age, and of a dissipated and rather lawless character. Arriving in Calcutta, he obtained an introduction to the Appellant for the purpose of obtaining a loan of money from him, and made a promissory note, bearing date the 6th January 1882, by which he promised on demand to pay to a payee, not the Appellant, but a nominee of the Appellant, the sum of Rs. 5,000, with interest at 36 per cent. That note was part of a larger transaction, by which it was intended that he was to get a loan of Rs. 15,000 and to secure it by a mortgage. On the same day he entered into an agreement respecting that mortgage, but the mortgage was never executed, and the transaction fell through, except as regards the promissory note above referred to.

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A considerable controversy arose before the District Judge and before the High Court as to what amount of money actually passed into the hands of the Respondent in exchange for the note. Both the Courts have concurrently found that only Rs. 1,500 reached the hands of the Respondent, and that the Respondent was a minor at the time when the note was executed, and their Lordships consider that the ordinary rule as to concurrent findings applies, so that the case must be approached with those as facts assumed.

On the 27th September 1883 the Respondent is alleged to have signed a second promissory note, thereby promising to pay to the Appellant or order on demand the sum of Rs. 7,200, with interest at 18 per cent. The Respondent had come of age before his alleged execution of this note, namely, on the 25th March 1883. The Appellant's story, as regards the making of the note, is that he was pressing for his money, and that on the day before the note was executed a Mukhtar and a man named Russick attended at his office; that they came there on the part of the Respondent, took an account of what was due in respect of the note of the 6th January 1882, and ascertained that there was an amount of Rs. 7,200 due; that thereupon it was agreed that the Respondent would attend at his office on the following day, and execute a promissory note for Rs. 7,200, and that the Respondent did attend accordingly and signed the note. The Respondent denied that he executed the note.

The Appellant stated, as their Lordships understand, that there were six persons present on the occasion of the execution of the note: himself, two witnesses to the note, Jagat Narain and Bepin Behari, the Mukhtar, Russick, and another person, who it has been proved is dead. Four of these persons have been examined, namely, the Appellant, Jagat Narain, Bepin Behari, and the

Respondent. The Mukhtar was not called, the Appellant's explanation for not calling him being that he did not know who he was; that he knew nothing about him, and that he could not find him. Russick he knew extremely well, seeing that he was the person who introduced the transaction to him in the month of January 1882; he said that he had searched for Russick, but had been unable to find him. Therefore, at the outset, there is the observation that the two persons who purported to have acted for the Respondent in the making out of the account on the day before the note was signed are not produced, and the Appellant relies upon his own evidence and that of his two witnesses. These three persons swear that they saw Monindra sign the note. He swears he did not sign it. There is a flat contradiction between them. Their Lordships would not be disposed to pay too much attention to the mere denial of the Respondent, because a portion of his evidence was read in which he showed a facility for telling a lie upon any subject, when it was convenient to him to do so. The two witnesses are stated to be persons to some extent dependent upon the Appellant, and whom he was likely to have influence over. He himself, of course, has a large interest in the matter.

That being the outline of the case, the District Judge remarked that, "Though the evidence may "show, perhaps, that Hurri Churn is rather "difficult in money transactions, there is no "reason for assuming him to be a forger," and he grounded that opinion very much upon the inherent improbability of the Appellant committing a forgery when he would run great risk of detection. In the result he gave the Appellant a partial decree.

The High Court, on appeal, differed with the Judgment of the District Judge, and came to the

conclusion that the second note was not executed by the Respondent, and their Lordships agree with that conclusion.

It is, in the first place, worthy of notice that the Respondent was a minor at the time of the execution of the first note, and he, therefore, was not liable upon it unless he chose, having come of age in March 1883, to voluntarily incur a new liability. This is a very unlikely thing for him to have done, seeing that he does not appear to be a person of punctilious honour, who having incurred a liability when he was a minor would feel that it was due to himself to resume it when he came of age. Moreover, he does not seem to have acted without advice, and it is improbable that if he only received Rs. 1,500 he would voluntarily incur a liability for Rs. 7,200 with interest at 18 per cent. on a note payable on demand.

It further appears that the Appellant when he got the first note executed took great care to fence it round in such a way that its execution could not be disputed. He got it drawn up by an attorney, he attended at the solicitor's office, and had a direct witness, not a bystander, but a person who pledged himself by the affixing of his signature that he was a witness to the execution of it by the Respondent. He also had it registered after some trouble, and the Respondent was identified before a public officer as being the real person who had executed the note. None of these precautions were taken over the second note, though there is every reason why the Appellant should have considered them at least as necessary in that case as in the case of the first note, if the second note had been in fact executed by the Respondent. With all these improbabilities, which are very ably summed up by the High Court, their Lordships are now called upon to reverse the Judgment of the

High Court, and to say that it has taken a wrong view of the case.

The only novel point which was suggested at the Bar by Counsel for the Appellant is with reference to the correspondence, of which neither of the Courts below took any notice. All that the correspondence shows is that in the month of January 1885, a year and four months after the second note was made, the Appellant wrote a letter to the Respondent, in which he said, "Since the "date of the renewal of your note-of-hand you "have not paid me a single pie on account of your "debt." The word "renewal" would doubtless attract the attention of a business man, but whether it attracted the attention of the Respondent or not it is very difficult to say. The letter did, however, put into motion his cousin, Upendra Nath Ghose, a man of business, who, two or three months afterwards, went to the Appellant, and demanded to see the note for which he was bringing his claim against the Respondent. He said he knew that the Respondent had executed a note, because the Respondent had told him so. He said the Appellant refused to show him the note. The Appellant himself does not pretend that he did show it to him. But he adds this to the account given by Upendra of the interview, that Upendra purporting to come on behalf of the Respondent, said to him, "The money due to "you will soon be paid." This Upendra denied, and there is only the statement of the Appellant and of Upendra on the subject. It does not, therefore, appear to their Lordships that the correspondence is of any very decided weight on the side of the Appellant, which is probably the reason why it is not referred to by either of the Courts below.

There is one matter which occurs to their Lordships as affecting the Appellant's case, which does not appear to have been noticed in

the Judgment of the High Court, namely, that Bepin Behari and the Appellant did not give at all the same account of the execution of the second note. The Appellant alleged that the account was made up the day before the second note was signed, that it was approved of by the Mukhtar and Russick on the Respondent's behalf, and that they undertook to bring him to sign it on the following day. Bepin Behari, on the contrary, says that it was he who made up the account, that he made it upon the day on which the note was executed, and that he made it from the Appellant's loan-book. The absence of that loan-book is much commented upon by the High Court. There is no account given why it was not produced. It might have verified one story or the other, but suffice it to say that the Appellant on whom it lay to produce it did not do so.

Upon these grounds their Lordships see no reason to disturb the finding of the High Court, and accordingly, they will humbly advise Her Majesty that the Judgment of the High Court should be affirmed, and this appeal dismissed. The Appellant will pay the costs of the appeal.