

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kalagurla Suryanarayana v. Yarlagadda Naidoo, from the High Court of Judicature at Fort William, in Bengal; delivered 1st day of March 1902.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR FORD NORTH.

*[Delivered by Sir Ford North.]*

In the autumn of the year 1896 one Pasumarti Jogappa (hereinafter called Jogappa) carrying on business in Calcutta ordered certain goods from a merchant in Madras named Yarlagadda Naidoo (hereinafter referred to as Yarlagadda), not having, as Jogappa admits, any money at the time to pay for them. Ten Hundis were drawn against them for the price, the first only of which was paid. None of the others were accepted. Two of them were presented for acceptance by a bank official who did not understand the Telegue language, and Jogappa wrote on them in that language what purported to be his acceptance, but turned out when interpreted to be not an acceptance, but a date only. The goods were on arrival at once transferred by Jogappa by delivery orders to the Appellant Kalagurla Suryanarayana (hereinafter referred to as Kalagurla), to whom Jogappa was largely indebted. It is clear from the evidence that at this time Jogappa was hopelessly insolvent, without either money or credit.

After various unsuccessful attempts by telegram and letter to obtain payment Yarlagadda sent his gomashtha or agent Bantha Narayana (hereinafter called Bantha) to Calcutta to endeavour to collect the money, with letters to Jogappa and Kalagurla. He arrived about 1st December and delivered the letters. That to Kalagurla is not produced, but Kalagurla admitted that it referred to the money due from Jogappa for the goods, and the non-acceptance of the Hundis, and requested Kalagurla's help to get payment from Jogappa. Bantha adds that Kalagurla said he had the goods, though he would not say how he got them; and that no money could be got from Jogappa. Bantha found no help there. It may be added that Kalagurla and Jogappa were closely connected in business matters, and had their offices in the same building.

The story told by Kalagurla is that he complained to Jogappa that the goods were of inferior quality; that Jogappa then offered to take them off his hands and sell them, and with the proceeds pay Kalagurla; that Kalagurla refused to part with them till he was paid all that Jogappa owed him; that Jogappa then requested him to sell the goods for him on commission; and that he proceeded to do so, his first sale being on 14th November. Then the case set up by the Appellant is that a settlement was come to by which the price to be paid for the goods was reduced (on the ground of inferiority) to Rs. 9,000, *i.e.*, by nearly 10 per cent.; and that this sum was paid to Bantha as to Rs. 4,000 on 18th December, and Rs. 5,000 on 25th December, thus satisfying the entire price. Bantha denies absolutely that any such settlement or payments were ever made; and it is therefore material to consider first what evidence there is of such a settlement. Jogappa goes the

length of saying that this settlement was made between Kalagurla, Bantha, and himself, and was concluded on 18th December; and that it was Kalagurla who fixed the amount at Rs. 9,000. Kalagurla says that he was not a party to any such settlement, and that he never informed Bantha about the goods being inferior; that he was only selling on commission; and that it was only on 18th December that Bantha and Jogappa told him they had made such a settlement. Such an arrangement, if made, should in the ordinary course of business have been put into writing, to protect Jogappa against any further claim by Yarlagadda; but this was not done. Why should Bantha have accepted without more Jogappa's statement that the goods were of inferior quality? An abatement for inferiority could only have been made upon careful examination and inspection of the goods; but they were in the possession of Kalargula, and were never shown to Bantha or Jogappa at all; and before Bantha reached Calcutta Kalagurla had actually sold more than one-third of the goods in question, and by 15th December more than two-thirds; so that any inspection of them at the date of the alleged settlement was impossible. No complaint of inferiority was made by anyone to Yarlagadda, from whom the goods were bought; though one would have thought some consultation with him essential before there could be a large reduction in price on that ground. Further, on 23rd November Yarlagadda wrote to Jogappa complaining that his Hundis had been dishonoured, and the goods were not paid for; that it would be dishonourable not to pay, and requesting immediate payment; and he added that he was sending Bantha to collect the money. To this Jogappa replied by letter on 14th December saying that he did not intend to defraud, but misfortune had reduced

him to his present condition ; and the letter concluded " Please know that I am suffering in my mind until I pay you your dues. In no case I shall swallow your money, and you will see this in future. I have credited the invoices of goods sent me by you." Is it credible that this letter would have been written, without any reference to the inferiority of the goods, and the pending settlement for an abatement of the price, if any such question was then open ? If it had been, how could Jogappa have " credited the invoices ?" It should be mentioned that Jogappa denies having written that letter ; but there can be no doubt that he did so ; and this denial by him is one of many circumstances that render his testimony wholly unworthy of credit. If, as their Lordships hold, the proof of this alleged settlement fails, the foundation of the statement that the subsequent payments were on the footing of Rs. 9,000 and no more being due is cut away also.

Before considering the alleged payments to Bantha above referred to, it will be useful to refer to the subsequent history of the case. On 21st December, three days after the alleged payment of the Rs. 4,000, Bantha consulted Messrs. Wilson Chatterjee and Mitra, and under their advice presented a petition in the Insolvent Court to have Jogappa declared an insolvent. That petition stated the consignment of the goods, the dishonour of the Hundis, the fraudulent transfer of the goods to Kalagurla, and that the purchase money of Rs. 9,917. 4. 2 was still unpaid, and on the same day an order was made calling upon Jogappa to show cause why he should not be adjudged to have committed an act of insolvency. Three days afterwards it is alleged that the balance of the debt was paid, and the whole claim of Yarlagadda thereby discharged. Notwithstanding this the proceedings

were continued by Bantha. Jogappa made an affidavit stating that the accounts were settled between him and Bantha at several interviews between 2nd and 18th December, and that the Rs. 4,000 was paid on the 18th and the Rs. 5,000 on the 25th. Kalagurla also made an affidavit saying that he was present and saw Jogappa pay Bantha those sums on those days, and that on the 25th the account between Jogappa and Bantha was finally adjusted. These versions of the settlement are quite inconsistent, and Kalagurla swore elsewhere (as already mentioned) that he never was present at any settlement. He also swore that he never knew that the goods in his possession came from Yarlagadda at all, which it is impossible to believe, in the face of the evidence.

The petition was heard by Mr. Justice Jenkins on the 11th of March 1897; and notwithstanding the evidence of Kalagurla and Jogappa he held that the alleged payments to Bantha were not proved, made the order nisi absolute, and adjudicated Jogappa insolvent; and the usual consequential orders were made. There has been no appeal from that order.

Down to this time Kalagurla had not been a party to the proceedings; but in November 1897 Bantha on Yarlagadda's behalf presented a further petition in the Insolvency, stating the facts and asking a declaration that the transfer of the goods to Kalagurla might be declared fraudulent and void against the official assignee, and that Kalagurla might be ordered to make over to him the goods or their proceeds; and on 20th November an order was made calling upon Kalagurla and Jogappa to show cause why this should not be done.

The question thus raised and (by consent of the parties) the hearing of proof of Yarlagadda's claim came on for hearing before Mr. Justice

Jenkins in June 1898. Several further witnesses were called, and in the result that learned Judge on the 17th of June discharged the order nisi and disallowed Yarlagadda's claim.

There was an appeal from that decision to the Appellate jurisdiction of the High Court of Judicature at Fort William in Bengal; and that Court (the Chief Justice dissenting) on the 24th of February 1899 reversed that decision; made the order nisi absolute; declared that the transfer of the goods to Kalagurla was fraudulent and void against the official assignee; and ordered payment to him by Kalagurla of the amount which the latter admitted he had received from the sale of the goods.

From that decision Kalagurla has brought the present Appeal.

We must now return to December 1896, and consider the question of payment. Bantha's evidence is clear and distinct that he was not present on either of the two occasions, and did not receive any money whatever from Jogappa. If he did, what became of it? No one suggests that Yarlagadda received it; and there is no alternative but to say that Bantha misappropriated it. In such case one would expect him to have decamped with the money; but he did not. On the contrary he remained on the spot all the time, prosecuting the insolvency proceedings. Subramania Chetty, one of the Appellant's witnesses says that from 16th January 1897 to June 1898 (when he gave his evidence) he had been seeing Bantha "all along" at intervals of four or 10 days or so; and in particular in February 1898 Jogappa and Kalagurla wishing to make overtures to Bantha for a settlement had no difficulty in finding him. He was staying with his solicitor. His conduct in this respect was certainly what one would expect from an honest man, and not from a thief.

In the next place, is it conceivable that if Bantha had been fully paid in December no one would have communicated that fact to Yarlagadda? Jogappa would then at any rate, if not before, have answered Yarlagadda's letter of 22nd November. And would not Kalagurla and Jogappa or their solicitors have written indignantly to Yarlagadda, informing him of the fraudulent use Bantha, who had been paid in full, was making of his name in the insolvency proceedings? Yet nothing of the sort took place.

As regards the occasions when the payments were stated to have been made Bantha of course cannot give any direct evidence, as he denies that he was present; but it is a very remarkable thing that no paper or document of any kind is produced which is signed by him or is even alleged to have been shewn to him. When payment of a large sum is alleged, one's first question is where is the receipt? But it is admitted here that on neither occasion was any receipt given or asked for; and the only explanation given for the absence of any receipts is that Jogappa had confidence in Bantha—the stranger Bantha! Would any man of business dream of making such payments without taking receipts? The receipt would be necessary to protect the payer against any further demand not only by Bantha but by his principal. Again at this time the nine Hundis were all outstanding, and in the ordinary course of business they would be got in when payment was made for the goods. Jogappa says “If Hundis are sent to me against the price of goods it is my practice to take back the Hundis when I pay the price of the goods” yet on this occasion the outstanding Hundis were ignored.

Then to show how Jogappa obtained the Rs. 4,000 to pay to Bantha a very strange story is told. At the end of October Jogappa owed

Kalagurla a large sum for which the latter threatened to sue Jogappa, and also claimed to hold the goods. Jogappa wanted Rs. 4,000 more: Kalagurla at first refused but was induced by a stranger passing along the street to make the loan, Jogappa giving him a letter charging the goods with this advance and also with his existing debt to Kalagurla. He also gave a formal receipt for the Rs. 4,000 to Kalagurla. Then on 1st November Jogappa lent this sum to one Hursook Das by way of accommodation. It seems strange that a man so short of money as Jogappa was, should borrow such a sum to accommodate a friend. A receipt is produced in the daybook of Jogappa, which it is said was signed by Hursook Das; in which no reference is made to interest, though Jogappa had to pay Kalagurla interest at nine per cent. Although no time was fixed for payment, Hursook Das turned up "by chance," Jogappa says, with the money on the morning of 18th December, and paid the money to Jogappa, and an entry appears in Jogappa's daybook of such payment. Notwithstanding the alleged agreement by Hursook Das to pay interest, none is paid; and in Jogappa's Statement of Affairs there is no entry of any interest as due from Hursook Das. It is a strange improbable story; and Hursook Das, who could have confirmed it, if true, is not called.

Being thus, as he alleges, most opportunely furnished with the money required, Jogappa says he paid it that evening to Bantha at Jogappa's guddy. Kalagurla says that he was present, and saw the payment. How he happened to be there is not explained, and when asked why no receipt was given he says he left while the money was being counted. Jogappa does not state who were present when this payment was made. Kalagurla says there were present in addition to

Jogappa, Bantha and himself, Khosal Dass, Sooram Pillai Bijayram Ayer, and others. Of these Khosal Dass was examined on commission, and told a remarkable story, but as Mr. Cohen stated explicitly that he did not rely on the testimony of this witness it need not be considered. The other persons referred to were not called at all.

An attempt to support Kalagurla's case is made by the evidence of two witnesses that later this same evening Bantha had Rs. 4,000 in his possession, which he said he had got from Jogappa. They are Soliappa and Descacharia, partners in a small cigar business. Soliappa says that on the evening of the 18th Bantha deposited with them Rs. 4,000 in currency notes, and that he made an entry in the daybook of himself and partner (Descacharia).

“ Credit Bantha Narayana

“ Kundasamy Chetty's account

“ Small notes Rs. 4,000. 0. 0 ”

He then adds that he asked Bantha who gave him this money; and the reply was “Jogappa.” Then Descacharia says that on the 19th he asked Bantha where he got the money; and the answer was “from Jogappa,” and that on the 20th the money was repaid to Bantha and that Soliappa made an entry in the same book.

“ Debit Bantha Narayana

“ Kundasamy Chetty's account

“ through Bantha Narayana

“ Small notes Rs. 4,000. 0. 0 ”

No explanation is given of the reference to Kundasamy Chetty's account; and no receipt was taken from Bantha. To give a local colouring to this story these witnesses say that Bantha lodged with them from 2nd December to 2nd January at 67 and 68 Phears Lane; and they produce some entries in their books consistent with that story; but why a temporary

deposit by a lodger with them should be entered in their business book does not appear. To test the truth of the story it is necessary to consider where Bantha really did live. He says that he arrived in Calcutta on 1st December, and slept the first night at 12 Sukeas Lane, but removed on the following day to 16, David Josephs Lane, a house let by Bhima Rao to a tenant, where he remained till after December. On the night of 14th December he was taken very ill at that house and was attended by a doctor, and unable to get up or go out of the house for six days, so that it was impossible for him to have been at Jogappa's on 18th December. Now the fact that Bantha was very ill about this time and confined to the house is not disputed by any one. Jogappa says he was not ill on the 18th; nor after the 18th till the 20th, but he does not say where he was then living. Bhima Rao says that Bantha fell ill on the 26th or 27th December and was ill about a week; and was attended by Dr. H. N. Ghose, not however in David Josephs Lane nor yet in Phears Lane, but at 12 Sukeas Lane, where Bhima Rao says Bantha lived throughout December. Soliappa and Descacharia only say that Bantha never was ill *at their house*, which apparently is true. There are two circumstances which strongly confirm Bantha's statements as to his residence, and the first is the evidence of Dr. Harendra Nath Ghose his medical adviser. After the affidavits of Jogappa and Kalagurla had raised the case that Bantha had been paid Rs. 4,000 on 18th December Dr. Ghose gave his certificate on 16th January that Bantha of No. 16 David Josephs Lane was under his treatment from the 15th to 20th December for fever and bronchitis, and during that period was quite unable to move from bed. Dr. Ghose gave oral evidence at the first trial, and Mr. Justice Jenkins referred

to him as a gentleman of respectability, and the learned Judge acted on his evidence, and decided in Bantha's favour. On the second trial he was called again, and cross-examined. He gave the same evidence as before, that he attended Bantha at 16 David Josephs Lane from 15th December to 20th December, and that during that time he could not have gone out. In answer to Kalagurla's Counsel he said that he knew the house well, he had been there more than once; but it was never suggested to him that his attendance was at another house, in a different street. On the second trial the learned Judge considered that the payment of the Rs. 4,000 was made out, and must have considered, as the Chief Justice did, that Dr. Ghose might have been under some error as to time or place, but neither of them referred unfavourably to his evidence. Their Lordships do not see any reason to doubt the accuracy and credibility of Dr. Ghose, and if his evidence is true Bantha could not have been at Jogappa's on 18th December.

The second circumstance relating to Bantha's residence is a very strong one. When Yarlagadda's petition of 21st December 1896 was filed two affidavits were sworn by Bantha in each of which he was described as of No. 16 David Josephs Lane. As they were in English, of which Bantha was ignorant, they had to be interpreted to him; and at the end of each affidavit is the following note "Solemnly affirmed at the Court House this 21st of December 1896 through the interpretation of Bhima Rao of 16 David Josephs Lane Calcutta the said Bhima Rao having been first affirmed that he had truly and faithfully interpreted the contents of the affidavit to the deponent and that he would truly and faithfully interpret the affirmation about to be administered to the

“ said deponent before me W. R. Fink Commissioner,” and then follows “The above affidavit and affirmation explained to the deponent by me Bhima Rao.”

It will be observed that Bhima Rao agrees with Bantha that both were living at the same house, but Bhima Rao says that he knew that in the statements in the affidavits as to residence Bantha was swearing to what was false, but that he did not call the attention of Bantha or anyone to it. In fact Bhima Rao was a thoroughly bad and untrustworthy witness; he admitted that he threatened Bantha that unless he paid him money he would go over to the other side; and in fact he did so. Neither Bhima nor Jogappa was called by either side; evidently no one trusted them; and it was the Judge's doing they were placed in the witness box.

Their Lordships do not entertain any doubt that the description of Bantha's residence given in these two affidavits and in the evidence of Dr. Ghose is correct. No reason is suggested why, when the legal proceedings were commenced, he should be falsely described; and it is extremely improbable that he would be; and it was not until June 1898 that any suggestion to that effect was made in the course of the cross-examination of Bantha.

This being so, their Lordships are satisfied that the evidence of Soliappa and Descacharia as to Bantha having lived at their house throughout the month of December 1896 is false; and their evidence therefore is wholly untrustworthy. Mr. Justice Jenkins dealt with the case upon the footing that it was proved by the evidence of Soliappa and Descacharia that Bantha had Rs. 4,000 in his hands on the night of 18th December which he said came from Jogappa; and that Bantha failed to prove that he got it from some other source. But the ground for this conclusion

fails when it is found that the evidence of these two witnesses is quite untrustworthy.

The proof of the alleged payment of Rs. 4,000 to Bantha on 18th December wholly fails.

The next question is as to the alleged payment to Bantha of Rs. 5,000 on 25th December, and it may be observed in passing that this rests upon and arises out of alleged settlement of the account at Rs. 9,000, and the alleged payment to Bantha of Rs. 4,000 on account seven days before; and if the first part of the story is not proved the second part must fall with the first. But to examine into this alleged payment, what are the facts deposed to? One Ramnarain Bannerjee proves that on 20th December he endorsed two numbered notes for Rs. 1,000 each to Gonesh Chunder. These notes are put in evidence, and the endorsement is proved. Gonesh Chunder proves that in October he had borrowed Rs. 2,500 from Kalagurla, and in the evening of 25th December he called at Kalagurla's guddi and said he had come to repay the loan, and did pay it by the two numbered notes already mentioned and some smaller notes, and he produces Kalagurla's receipt for the Rs. 2,500. He found Jogappa there, and at the same time and place he saw Kalagurla hand to Jogappa Rs. 4,500 including the two numbered notes for Rs. 1,000 each and saw Jogappa sign a promissory note (also produced) in Kalagurla's favour for Rs. 4,500, made up of the two numbered notes for Rs. 1,000 each, another numbered note for Rs. 100, and Rs. 2,400 in small notes and silver. There is no evidence conflicting with this, but it is not suggested that Bantha was present: and Bantha denies it.

Then Kalagurla's evidence is that on the 25th December in the evening he saw Jogappa pay the Rs. 4,500 received from him, and another Rs. 500, to Bantha in Jogappa's guddi in the presence of

Sowaram Pillai Bijayram Ayer, (who has not been examined), Khosul Das already referred to, and of one Kandaswamy (who he said was with Bantha but had gone away) and of others. Why Kalagurla was present does not appear. It was at his own guddi he paid the money to Jogappa; and he says he left Jogappa's as soon as the money was paid to Bantha. Jogappa's evidence agrees with Kalagurla as to time and place, but he says that the persons present were Kalagurla, Sookul Sewaram (the person from whom he had borrowed the Rs. 500) the two men from Vizianagram, and two or three Marwaris whose names he did not recollect. He does not mention Kandaswamy; and of the others referred to by Kalagurla and Jogappa only one has been examined, viz. Koosal Das, from Vizianagram, whose evidence Mr. Cohen threw over. It is impossible to attach any weight to this evidence of payment, especially when it is remembered that no receipt was taken, and that the Hundis were left outstanding.

But it is said that the two numbered notes for Rs. 1,000 each, and the numbered note for Rs. 100, already referred to, can be traced through Bantha's hands; and this if satisfactorily proved, would be of great importance. There is evidence that the two Rs. 1,000 notes were passed on 18th January by one P. L. K. R. Subramania Chetty to Multan Chand Nursing Dass and that they passed ultimately to the Bank of Bengal from whose custody they are produced. But the question is how they reached Subramania Chetty. He is represented to be a merchant in a large way of business; but it appears on cross-examination that he is a mere gomastha at a small salary, and has no interest or share in the business of his master P. L. K. R. Chetty. His story is that on the evening of 16th January 1897 Bhima Rao and Bantha came to his shop,

and that Bantha produced the two Rs. 1,000 notes, to be changed; that the witness said to Bhima Rao that he did not know Bantha, and would not give him change; that Bhima Rao said he knew him, and the witness need not be under any anxiety in giving him the change; and that thereupon the witness changed the notes. He added that during the conversation one V. V. R. A. Chetty (also called Subramania Chetty) came in. The witness also said that he had large pecuniary transactions with Kalagurla. He also produced a book containing entries of notes which he received and paid; and in it an entry is found relating to two Rs. 1,000 notes bearing the numbers in question; and the names of the persons from and to whom they are received and paid, with the dates. The entry in the column showing from whom they were received is "Received from Bantha Narayan "Bhima Rao miscellaneous changes." It appeared also that the entry was made not by the witness but by his clerk Alayappa Chetty. The witness also said that he never told anyone he had changed the notes till three or four months before the trial, *i.e.*, till more than 12 months after the event. Then Bhima Rao says that in December 1896 or January 1897, just about the time of Jogappa's adjudication (which was not till March) Bantha brought him two Rs. 1,000 notes to be changed, that he took him to Subramania Chetty's (who was called as a witness) but he had no change. Then he took him to A. K. A. Virappa Chetty's, but he could not change them. Then to K. R. Narain Chetty's, who said he had no change. Then to P. L. K. R. Subramania Chetty's, who did change them. Then Bantha went to his place at 12, Sukeas Lane; and Bhima went home. Then the next thing was that a few days before

he last left Calcutta (which was in March 1898) Kalagurla asked Bhima if he knew anything about the change of these notes, and he said that he and Bantha had changed these two notes. The notes, which are in evidence, are not indorsed by Bantha.

This was the whole evidence produced by Kalagurla with respect to this transaction; and it is obvious that it does not contain anything to justify the entry in the daybook that the notes were changed by Bantha and Bhima Rao. Alayappa Chetty, the clerk who made the entry, and was the person responsible for the form it took, and who might have given evidence that Bantha was there (if in fact he was) was not put into the witness box, though he was present in Court on subpoena. There is only evidence from one other person as to this transaction, viz., Subramania Chetty who P. L. K. R. Chetty says came in during the conversation, but whose presence Bhima Rao does not mention. Subramania Chetty was called by Bantha to prove certain matters not now material. In cross-examination he said that Bantha came with Bhima Rao to change a note at P. L. K. R. Chetty's. He sat with P. L. K. R. and made over a note in his hands. The note was placed in his hands. The notes were two notes of Rs. 1000 each. He made over the notes to P. L. K. R. Chetty. He came to me to change the notes but I said I had not the cash. I told him to cash the notes in some other house. I did not tell him to go to P. L. K. R. Chetty's. He went there. I went there on my own business and I saw him hand over the notes.

When Bantha was cross-examined he had denied positively that he had ever been with Bhima Rao to P. L. K. R. Chetty's or ever changed the two notes there; and when the above evidence by Yarlagadda's own witness was unexpectedly

sprung upon them his counsel asked for leave to cross-examine him ; but the Judge refused it. Their Lordships much regret that this course was adopted. Common fairness required that opportunity to test such statements by cross-examination should be given, if the evidence was to be relied on ; and that not having been done the evidence is of no value.

But the matter does not rest here. A good deal of evidence was gone into in the Courts below with respect to the discovery early in 1898 of the circumstances connected with the alleged dealings by Bantha with these two notes and the note for Rs. 100. Nothing could be more suspicious and unsatisfactory. Bhima Rao, whose own evidence proves him to have been a thorough scoundrel, and who at this time had carried out his threat of going over to the other side, was at the bottom of it. It is not necessary to go into the details ; they were carefully and exhaustively dealt with in the judgments of Prinsep J. and Ameer Ali J. in the Court of Appeal. Their Lordships concur in their reasons and conclusions ; and they are not satisfied that the two notes ever were passed by Bantha to P. L. K. R. Chetty as alleged—or that the real facts as to the entry in his book have ever been disclosed.

With respect to the smaller note for Rs. 100 Kalagurla says that he paid it to Jogappa, and he and Jogappa both say that it formed part of the Rs. 5,000 paid to Bantha on 25th December. Then in 1898 after Descacharia had given some information about the other two notes Kalagurla (with whom he was not acquainted) called upon him and said that he had given some information upon the two notes, but they wanted some information about the Rs. 100 note, and asked if he could give them any such information. Descacharia said he would look at their books and see ; and subsequently produced an entry in his books showing

that this note was paid to Soliappa and himself by Bantha. Soliappa gives evidence to the same effect. For reasons already given their Lordships are unable to place any reliance upon the evidence of those witnesses. Further than this, the note was before the Court of Appeal, and Prinsep J. stated (R. p. 313) that from the indorsements on the note it would seem to have passed through other hands at the time when it is said to have been in the hands of Jogappa and Bantha. An abstract of the note is set out at page 127 of the Record, but unfortunately without the indorsements. No one has suggested that it bore any indorsement by Bantha.

Their Lordships are much impressed by the fact that the documents proved in this case show that as between other persons matters were conducted in a business-like manner. Receipts promissory notes accounts and indorsements on notes are all forthcoming. But in the alleged transactions with Bantha there is nothing of the sort; no settlement of account, no receipts even for large sums, and no paper of any kind bearing Bantha's signature or writing, and no document of any kind which is even alleged to have been shown to him. It is impossible to believe that there would not have been some such documents producible if Kalagurla's story is true. The excuse that confidence was placed in Bantha is an idle one. Why should he be more trusted than others? The fact that he was a stranger, and an agent for an absent principal, are reasons why the ordinary business precautions should have been strictly observed.

There is one further matter to be dealt with. It has already been mentioned that in February 1898 Kalagurla and Jogappa made overtures to Bantha for a settlement. Bantha's version of what passed is that Kalagurla proposed he should take some money and go home. Bantha said if

Kalagurla would pay some amount in settlement of his master's dues he would consent otherwise not. Kalagurla asked Bantha how much he wanted. Bantha said the principal Rs. 10,000 and Rs. 5,000 to 6,000 for expenses. Kalagurla replied what is the use of coming for a settlement to you if I have to pay all the amount you have spent? that out of the Rs. 10,000 worth of property they got they had spent Rs. 5,000 for expenses, and were willing to return Bantha the balance of Rs. 5,000 in settlement; but Bantha would not accept that sum, and Kalagurla said he could not pay more than Rs. 5,000.

Kalagurla's story is that on 24th February he went with Jogappa and saw Bantha in the street near his house and told him he was willing to settle and proposed that Bantha should take half and let him take half and not be drowned in costs and expenses; but Bantha declined. Putting these two stories together it is easy to understand what passed. Now if Bantha's story that he had not been paid anything is true this proposal for a settlement was intelligible and probable, whether Bantha accepted it or not. But if Kalagurla's case is true that Bantha had already been paid in full, and was now prosecuting a fraudulent claim to obtain payment over again; is it credible that Kalagurla would have offered to pay Bantha Rs. 5,000 more out of his own pocket to have the proceedings stayed? And this, it will be observed, was after he had obtained all the information as to the passing of the notes. It will be observed also that the alleged payments to Bantha were not alluded to by Kalagurla at this interview.

In their Lordships' opinion after a full and careful consideration of all the evidence, the very able judgments of Prinsep J. and Ameer

Ali J. are right, and ought to be affirmed ; and they will humbly advise His Majesty that the Appeal should be dismissed.

Of course the Appellant must pay the costs.

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