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Feb. 11.

*Original Suit No. 553 of 1868.*

Davlatram Shriram *et al*.... ... ... *Plaintiffs.*
Bulakidas Khemchand... ... ... *Defendant.*

*Hindu Law of Contract—Forged* Hundi—*Payment of Forged* Hundi *by Drawee-Refund by Payee-Mercantile Usage.*

According to mercantile usage amongst Hindus, where a *hundi* drawn "payable to holder" (*shah jogi*), is paid at maturity by the drawee to the *shah* or holder of the *hundi*, and such *hundi* afterwards turns out to be forged, the *shah*, though a *bona fide* holder for value, is bound to repay to the drawee the amount of such *hundi* which interest from the date of payment, provided the drawee has been guilty of no laches in discovering the forgery and communicating the fact of such forgery to the *shah*.

The *shah*, however, relieves himself from such liability by producing the actual forger.

The facts of this case sufficiently appear from the judgment of the Court.

It was tried by ARNOULD, J., on the 11th of January and following days.

The *Honorable L. H. Bayley* (Advocate General) and *Dunbar* for the plaintiffs.

*White* and *Scoble* for the defendant.

*Cur. adv. vult.*

ARNOULD, J.:—This was a suit for money had and received to recover back the amount of two *hundis*, one for Rs. 2,000, the other for Rs. 1,100, which had been paid by the plaintiffs to the defendant on the 24th of October 1867, and which afterwards, as the plaintiff aver, turned out to have been forged. The plaintiffs also claimed interest on the amount at six per cent.

The sole issue raised was, whether the plaintiffs, under the circumstances disclosed on the evidence, were entitled to receive back the money claimed with interest as demanded.

This being a matter of contract in which both parties are Hindus has to be determined in this Court under cl. 29 of the Old Supreme Court Charter of 1823, continued in force by

cl. 18 of the Letters Patent of 1862, and cl. 19 of the Letters Patent of 1865, by the laws and usages of the Hindus, or by such laws and usages as the same would have been determined by if the suit had been brought and the action commenced in a Native Court.

The documents, on which the moneys sought to be recovered in the suit were paid, were *hundis* made payable to *shah shah jogi*, and such *hundis* differ from bills of exchange in one very material circumstance, amongt others, that, as a general rule, the acceptance of the drawee is not written across them, so as thereby to give them an additional degree of mercantile credit, and to that extent make it just to impose an additional degree of liability on the acceptor ; but, as a rule, the particulars are only entered in the drawee's books. It may be added also, as a general rule, that *hundis* are very frequently not presented for acceptance before they are presented for payment, before, that is, they are either due or overdue.

The general process is this :—The *shah* or person who has bought or holds the *hundi*, and *whose name must always be indorsed on it before it is presented*, sends one of his men to the shop of the drawee, whose *killidar*, after referring to the particulars of advices relating to the *hundi* which have in due course been previously entered in the *chitti nond* or bill-book, and finding it correspond therewith, thereupon, enters in the journal the particulars of the *hundi*, viz., its amount, date, due date, name of *shah* or person tendering it for acceptance, and whose name, as already intimated, is always indorsed on the *hundi*. He then returns the *hundi* to the servant of the *shah* who takes it back to the *shah's* shop. If the day of presentment be the exact due date, the amount is paid on that very day ; if the *hundi* is overdue when presented, it is generally paid the next day, the reason assigned being that, unless presented on the actual due date—when of course its presentation is expected and provided for—the *munim* or principal of the firm may not be present, or there may not be sufficient cash in the hands of the *killidar* to meet the amount. Payment is made by

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sending the amount by a servant of the drawee to the shop of the *shah*. On receiving the amount, the *killidar* of the *shah* writes an acknowledgement in full on the back of the *hundi*, and sends it back to the shop of the drawee by the servant who has brought it thence.

It may make the case clearer to state the particulars of the two *hundis* in this case, and to copy the exact entry which the *killidar* of the plaintiffs made of them in their journal when they were presented for payment. Both *hundis* are precisely in the same form, only varying in amount—one being for Rs. 2,000, the order for Rs. 1,100. They purport to be drawn on the plaintiffs' Bombay branch. "Shriram Davlatram, at Bombay," by one Cantiprasad Beharilal, at Mayarampur, in respect of the two sums of Rs. 2,000 and Rs. 1,100 respectively stated in the entry of each *hundi* to have been deposited at (or paid into) the Gwalior branch of plaintiffs' firm, Kisandas Balmakund," by one Kunyalal Joharimalprasad, merchant. Each is made *payable to shah* forty-five days after the 27th of August 1867. These forty-five days would expire on the 11th of October 1867, but as their due date is stated to have been the 14th and 15th of October 1867, it is to be taken that three days' grace were allowed on them. When presented for acceptance at the plaintiffs shop, on the 24th of October 1867, each had this indorsement upon it:—" this *hundi* was sold by Kanyalal Joharimalprasad to Khemchand Mulchand, (defendant's firm.")

Defendant's firm, by virtue of this indorsement, became the *shah*, to whom the *hundi* was payable.

On the 24th of October 1867, a man of the defendant's Bombay branch presented the two *hundis* for acceptance at the plaintiffs' shop of Shriram Davlatram, at Bombay, the drawee of the *hundis*. The *killidar* of Shriram Davlatram then, having satisfied himself by reference to advices and the entries in the *chitti nond* that the *hundis* were all right made the following entry in his journal:—"Debited to Kisandas Balmakandas of Lushker (the plaintiffs' branch firm at Gwalior) under date 3rd Kartik Vud—(that is the due

date of the *hundis*, and in the Maroo reckoning corresponds with our 14th and 15th October); debited to your account drawn from Mayarampur by Kanti Prasad Beharilal, the money having been deposited by Kunyalal Joharimalprasad, a merchant, drawn on Bhadurva Vud 13 (27th August) at forty-five days, one for Rs. 2,000, another for Rs. 1,100. Credited to Khemchand Mulchand on Kartik Vud 13 (*i.e.*, the 25th of October, the day after presentation, being that on which being overdue, the amount of the *hundis* would properly be paid) drawn on us and accepted the 12th Kartik Vud (the 24th of October). These *hundis*, when presented, were nine days overdue, and therefore, according to rule, should not have been paid till next day (25th October), on which day accordingly they were credited to the defendants; but that day being one of the Divali holidays, and, Khemchand Mulchand, the *shah* being known to plaintiffs as a respectable shroff, the amount was paid on that very day.

Now, before going into what is disputed in this case (*viz.* the existence of a rule of the Indian law merchant that there should be a refund on *hundis* made payable to *shah* in cases where it afterwards turns out that the *hundis* are forged, or fraudulent,) it will be convenient to advert to those points in which both parties substantially agree. And first as to the very important point of the meaning attached in the Hindu mercantile world to the formula "payable to *shah*." Now, the result of the evidence on both sides as to this point, supported by the learned etymological evidence of Mr. Balaji Pandurang, is clearly this, that *shah* means *a responsible and respectable person, a man of worth and substance known in the bazar. A hundi payable to shah is paid on the responsibility of the shah.* If he be not known to the drawee, inquiry is made about him, and the amount of the *hundi* is not paid till that inquiry is satisfactorily answered, or till some one known to the drawee is found to indentify him or speak to his resposibility.

The reason of this, say the plaintiffs' witnesses, is that if the *hundi*, after having been paid to the *shah*, turns out to have been forged or lost or stolen, recource may be had to

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the *shah* to procure a refund. Not so, say the defendant's witnesses, in the case of forged *hundis*; in such case there can be no refund, but we quite admit it is so in the case of lost or stolen *hundis*. Thus, of the defendant's witnesses, his Bombay *munim* says, "*shah jogi*" means payable to a responsible person; another witness for the defendant, says, "*shah jogi*" means "payable to some one who is known or, if not known, who can get some one to speak to his character." Another witness for the defendant, the Bombay *munim* of the leading or *panch* Gujarati shroff's firm of Gokulbhai Mulchand, says, "*shah jogi* means payable to a respectable and responsible person, in order that if the *hundi* afterwards turns out to have been lost or stolen, then, on failure to produce duplicate or triplicate, the *shah* to whom payment has bean made must refund." This same witness added—"In order that the person to whom payment has been made shall be able to refund, if occasion arises, he must be a *shah*—that is, a respectable or responsible person." The defendant's witness, the Bombay *munim* of the considerable Gujrati shroff's firm of Mansukbhai Bhagubhai says—*shah*, means that the person to whom the *hundi* is paid must be a responsible person." Another witness of the defendant, the *munim*, of the Gujrati firm of Bechardass Manschand, after saying the same thing almost in the same words gives the reason thus.—"The reason of drawing *hundis* payable to *shah* is this: supposing the *hundis* to have been lost or stolen, then, on producing the duplicate to the *shah* he may refund it; that is, why he ought to be respectable." These are all extracts from the evidence given for the defendant

There is another point of considerable importance as to which the witnesses on both sides are agreed. It is this—a *hundi* ought not to be paid by the drawee unless it has indorsed on it when presented the name of the *shah* by whom it is presented, or rather by whom it is sent for presentation. In the case of the two *hundis* with which we are concerned in this suit each bears this indorcement:—"This hundi was sold by Kanyalal Joharimal prasad to Khemchand

Mulchand." This indorsement the defendant says was made by Kunyalal in his presence. And defendant's Bombay *munim* states, as the fact is, that the indorsement is in the proper and usual form. Of the defendant's witnesses (whom alone I shall cite on this point) the Bombay *munim* of the *punch* or leading firm among the Gujarati shroffs, of Gokalbhai Mulchand , says—"The *hundi* is always indorsed payable to the party who presents it: if his name is not on it we should not accept it." The Bombay *munim* of Mansukbhai Bhagubhai, says—"We look at the indorsement on the *hundi* making it payable to the person who presents it for payment ; if satisfied, we make payment, and in due course pay."

It seems to me that this evidence strongly tends to show that the drawee of the *hundi*, in accepting and paying it looks very mainly to the *shah* as responsible in case of any thing afterwards going wrong with the *hundi*; and that he relies on the solvency and respectability of the *shah* as one of the principal grounds in inducing him to make payment without further inquiry.

As has already appeared by the forgoing extracts from the evidence, there is another important point on which the witnesses of the plaintiffs and those of the defendant substantially agree, and that is, that on certain conditions, such as first challenging the production of duplicate triplicate &c., the drawee who has paid the amount of a lost or stolen *hundi* payable to *shah* is entitled to a refund from the *shah* to whom it has been mistakenly paid. But while admitting this, the defendant's witnesses, with one exception, namely Ramgopal Kiniram, *munim* of the Bombay branch of a large shroff's firm having its head-quarters at Hyderabad strongly deny that there can be any refund on *forged hundis*. On the other hand, the plaintiff's witnesses, who in length of experience and extent of business are unquestionably superior as a body to the witnesses of the defendant, declare that the case of forgery forms no exception in India to the general rule; and that it has been an immemorial custom all over India—a part of the law merchant of India—as old as

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the existence of shroffs and shroffing in the country that where a *hundi* "payable to *shah*" has been paid by the drawee to the *sha* who presents it, and afterwards turns out to have been forged, then, on discovery of the forgery and communication thereof of the *shah*, the drawee, who has paid the amount of the *hundi*, is entitled to have that amount refunded by the *shah* together with interest at six per cent. (or close upon it) from the period of the mistaken payment till that of the refund. Five of these witnesses are *munims*—and *munims* of some standing — of the five largest Marvadi shroffs' firms in Western India—of Ganesh Krishnaji, the leading or *panch* house of Marvadi shroffs in Bombay; of Shivlal Motilal; of Hazarimal Narsidas; of Bansilal Amirchand; and of the plaintiffs, Shivram Davaltram each of which has passing through their Bombay branches alone some crore or million sterling of *hundis* in the course of the year. It will be sufficient to extract from the evidence of two of the most intelligent of these witnesses,—that of the Bombay *munim* of Shivlal Motilal, and that of the Bombay *munim* of Hazarilal Narsidas. The former says the amount of a forged *hundi* must be refunded with interest at six percent (or a little under) from date of payment. The *shah*, or person to whom the money has been paid, must point out the responsible person (the drawer), and, if he do not, he is responsible himself; if he do, the drawer must refund. We, in every case, look to the *shah i. e.* the person who brings the *hundi* to us for payment, as the responsible party." The latter says "in all cases we pay on the responsibility of the *shah*. If the *hundi* turns out to be forged or stolen, the *shah* to whom the money has been paid is obliged to refund it to the person who has paid it with six per cent interest. This is the universally established custom throughout India among natives. It is an old as shroffing; it has been the custom since shroffing came into existence."

In cases where the *hundi* turns out to be forged, application for duplicate, triplicate, &c. would be little more then a nugatory form, and, on the evidence, is not to be taken as

necessary, though it is necessary, and with reason, in the case of lost or stolen *hundis*. In the case of forged *hundis* No. 6 and No. 10 represent that if the *hundi* turns out to be forged, the *shah* has to refund even though he has been applied to for, and has produced, duplicate, and triplicate, unless in fact he produces the forger—a case not very likely to arise in practice.

It has been objected that the custom, as stated by the plaintiffs' witnesses is unreasonable, because alleged to be without limitation of time. This I take to mean without *fixed limitation* of time, as for many months, or many years; it is not meant (which would indeed be clearly unreasonable) that if the discovery or communication to the *sha* of the fact of the forgery is delayed by the laches or negligence of the drawee that he can, in such case, claim a refund from the *shah*. The rule, I take it, as substantially sought to be established by the plaintiffs' evidence is this, that in the absence of any proof of connivance or laches on the part of the drawee, who has paid to *sha* on presentation a *hundi* drawn "*shah jogi*," the drawee, on the *hundi* afterwards turning out to have been a forged *hundi*, is entitled to a refund from the *shah*, though an innocent and *bona fide* buyer of the *hundi* for full value, with interest at six per cent. from the day of payment to the day of refund provided that the drawee has discovered the forgery as soon as according to the usual course of business it could be discovered, and has lost no time in communicating the fact of forgery to, and in making his claim for refund upon, the *shah*.

Taking this to be a rule, I can see nothing unreasonable in it, as applied to Indian *hundis* bearing in mind the evidence in which both sides agree, as to the degree in which the drawee of an Indian *hundi* looks to and relies upon the responsibility and respectability of the *shah* who presents it to him for payment; and as to the existence of such a rule, as a part of the law merchant of India I think the weight of the evidence preponderates decidedly in favour of the plaintiffs.

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In instances, indeed, of the application of the alleged customary rule to practice, the evidence, of both sides is very week; no single specific and well attested instance of a refund in the case of a forged *hundi* was adduced by the plaintiffs' witnesses. The *munim* of the plaintiffs' Bombay branch said indeed, 'I have known many instances at Delhi, Jaipuer, Benares, and other places in which refund has been made on forged *hundis*." But he did not give the particular of any single case. He added, "since the British *raj* shroffs have made objections to refund; before they used to pay as a matter of course." He did specify two instances of a refund on stolen *hundis* at Calcutta; but as to stolen *hundis* there is really no question at issue between the plaintiffs and the defendant; the bulk of the defendant's witnesses agreeing on this point with all the witnesses of the plaintiffs that refund is the rule in the case of *stolen hundis*. Plaintiffs' witnesses No. 3 gave particulars of a case of a refund on a *hundi* which, on his examination in chief, he said was forged; but on cross examination it turned out that he could not be positive whether the case was one of a forged or stolen *hundi*.

With reference to stolen *hundis*, a curious fact was elicited in the examination of the plaintiffs' witnesses, viz. that the great *panch* house of Ganeshdas Krishnaji in Bombay had failed to refund on a *stolen hundi* in respect of which claim had been made on them so to do. Plaintiffs' witness Kavalchand Amirchand, who seems to be a sort of consulting manager of Ganeshdas Krishnaji said, with reference to this case, that he had told Benaichand, the late Bombay *munim* of Ganeshdas Krishnaji, now absconded and under suspicious of having abstracted moneys, that he ought to refund this amount, and that Benaichand had promised to do so, but never did. Of the witnesses for the defendant Maganlal Parbhudas, partner in the firm of Lallubhai Parbhudas, spoke very confidently to a case which had occurred about fifteen years ago in which his firm had been paid by Joharimal Shivlal the amount of a *hundi* for Rs. 50, which a year and a half after turned out to have been

forged: a claim for refund was made by Joharimal Shivlal. A *panchayat* was called at the *panch* house of Ganeshdas Krishnaji. The witness was not present at the *panch* having been only about sixteen at the time, but he had always been told, and he took upon him to affirm, that the decision of the *panch* was *against* the refund: of this he was sure (and in this his evidence appears correct,) that no refund had ever actually been made by his firm. To rebut this evidence an old Marvadi, Ramnarayan Dayaram, a partner in the firm of Joharimal Shivlal by whom the amount of the forged *hundi* had been paid, was called. He *had* been present at the *panch* and swore positively that the decision of the *panch* was that a refund *should* be made: to support this he produced his books, which clearly showed that he had charged the amount of the payment as of the date on which it was made in his account with Lalubhai Purbhudas, but he admitted that the account had never been finally adjusted, that interest at six per cent, had accordingly not been computed, calculation of interest not taking place till final adjustment, and that the amount had thus not actually been paid.

Upon this evidence the fair conclusion seems to be that the decision of the *panchayat* on the occasion referred to was in favour of a refund, although in *fact* no refund was made and that the instance, when sifted, is in a favour of the plaintiffs. It shows how imperfectly the case of plaintiffs has been got up, that the evidence of this man Ramnarayan was not adduced in the first instance, instead of being brought in almost accidently in contradiction of one of the defendants witnesses. The defendant's witness Atmaram Rajaram mentioned, with particulars, two instances, in which, some five or six years ago, the *panch* house at Puna of Deyaram Atmaram, the Puna branch of the great firm of Jarrachand Atmaram, which after a duration of some three centuries fell in the late share mania, decided against a refund in the case of two *forged hundis*. The evidence, if it could be relied upon would be every important: but I feel clear it cannot be relied upon: it has not been sifted, if it had, it might turn out, as in the case

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deposed to by Maganlal Parbhudas, that the decision of the *punch* was exactly the other way: the witness Atmaram Rajaram, moreover, is in the same position precisely as the defendant in this case, having been paid the amount of two other *hundis* one for Rs. 2,000 and the other for Rs. 1,000, which together with the Rs. 3,100 now sued for, make up the Rs 6, 100 the aggregate of the forged *hundis* drawn by Beharimal on Shriram Davlataram. A refund has been chaimed from him, and he has been served with notice of an action, the result of which, as he said, he understood will depend on the decision in this suit.

It seems extraordinary that so few instances can be adduced of the application of a rule said to be universal in India; the reason may be found, partly in the extreme rarity of the occurrence of a forged *hundi*—a rarity which is deposed to by all the witnesses for the plaintiffs, and admitted by the great bulk of the witnesses for the defendant; something also must be attributed to the absence among Hindu shroffs of any available means of recording such cases as they arise. They have no mercantile journals or printed mercantile records of any kind: all depends on memory, and though their memory for particular facts and figures bearing on their every day business is very tenacious, yet they have but limited powers of observing general facts, or of bringing them out in evidence for the elucidation of a legal enquiry.

In order to supply in some degree what was wanting in this respect the *panch* house of Ganeshdas Krishanji on the 17th February 1868, called a meeting of shroffs at which there was embodied in writing the rule for the establishment of what, by a legal decision, the plaintiffs are now desirous of. It has been contended for the defendant that the writing or *bandobast* drawn up at this meeting was not so much the embodyment of an old rule, as the promulgation of a new one for future guidance. In this veiw I can not concur; the evidence I think clearly shows that Kavalchand Amirchand spoke truly in saying "I drafted that writing so as to embody what I believe to be the old and universal rule of practice." This was the primary object though of course

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the writing was intended to serve the purpose of forming a guide for future practice.

This writing was signed by 189 firms of Guzarathi and Marvadi Shroffs in Bombay: some firms like that of Mansukhbhai Bhagubhai may "have signed the writing under compulsion, because, unless they did, Ganeshdas Krishnaji would not pay *hundis* for them;" but after making all reasonable reductions on this account it still remains true that the writing has been signed by a very large number of the most influential shroff's firms in Bombay, because it expresses their sense of what the law merchant of India, as to the point to which it relates, both has been in the past and ought to be in the future.

To revert now from consideration of the general custom to the more special facts of this particular case. Does the evidence show the defendant to be innocent and *bona fide* indorsee of these *hundis* for full value ? To this answer that it clearly does, and I accordingly find that he was so.

Then is the forgery sufficiently proved ! It seems to me that it is: it was carried out no doubt by very extraordinary means; by first intercepting the letters passing between the Gwalior *munim* and the Bombay *munim* of the plaintiffs firm; next by copying out the contents of those letters accurately, adding only a passage relating to the forged *hundis* for Rs. 6,100; and then by transmitting the letters with the interpolated passages thus added to Gwalior and Bombay under the signatures—(so well imitated that had they stood alone they would have deceived even the supposed writers themselves, ] of the Bombay and Gwaliar *munims* respectively. The Gwaliar *munim* swore that the respective sums of Rs. 2,000 and Rs. 1,100, stated in the body of the *hundis* to have been deposited with the Gwalior firm, were never in fact deposited there: both the Bombay and Gwalior *munims* swore that the letters purporting to bear their respective signatures were forgeries. The Gwalior *munim* swore that though the residue of the contents of the Gwalior letters were correct transcripts from the genuine letters, yet the interpolated passages regarding the Rs. 6,100 of *hundis* were pure fa-

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brication: the Bombay *munim* swore that in two letters of 11th and 18th September respectively, he had answered the interpolated passages in the Gwaliar letters relating to these *hundis*: the Gwalior *munim* swore that he had received no letters from Bombay containing a syllable relating to these *hundis* : the inference of course being that these two letters from Bombay, which, if received at Gwalior would have led to instant detection of the fraud, had been intercepted like the rest and sent on copied with the exception of these passages relating to the advices as to the forged *hundis*. On the whole I am of opinion that the proof of forgery is reasonably and substantially sufficient.

It was urged that it was impossible that such a fraud could have been carried out without the concert or connivance of some of the servants of the plaintiff's firm, but though it may be difficult, it is certainly not impossible, to conceive that this may not have been so; and so tortuous and complicated are the ways of fraud in this country, that I should be very slow, without any evidence on the point, to come to the conclusion that any person in the employ of the plaintiffs must necessarily have asssisted in carrying out this elaborate scheme of roguery.

There was the fraud of such a nature that the plaintiffs can be charged with want of due care and vigilance in being taken in by it ? I think not; it is easy to be wise after the event, but I really do not see how any average set of mercantile agents could reasonably be expected to have been proof against so strange and artfully contrived a piece of deception as this as the *munim* of the plaintiffs said, besides the perfect resemblance of the signature, "all the other matters (except what related to the *hundis* ) mentioned in the letters were real transaction—that is what took us in," and I must say any one in the world not gifted with a quite preternatural acuteness might have been taken in, in the same way.

Then, have the plaintiffs been guilty of any laches in discovering or communicating to the defendants this forgery

which ought to disentitle them from recovering in this suit? Here again I think not. These people must be judged not by our modes of doing business, but by their own mode of doing business. It is the practice, it seems, of the plaintiffs' firm and of other firms similarly situated, that one branch firm does not communicate to another branch firm the payments it has made upon *hundis* in respect of which that other branch has written advices to it, but an account is sent fortnightly of all such payments, and of all other incomings and outgoings, by each one of the branches to the head firm, which in the case of the plaintiffs, happens to be at Navalghar, a place some five or six days' post from Bombay and as many more from Gwalior. It was not till comparison had been made by the head *munim* at Navalghar of the Gwalior and Bombay accounts that suspicion of fraud was first excited: enquiries were then set on foot and in January 1868, the conclusion was arrived at that the *hundis* were forgeries and that the firm had been made the victim of an extensive fraud. On the 25th January notice is sent by the plaintiffs attorneys to the defendant that the *hundis* have been discovered to be forged documents and a refund is claimed from him. I do not think that there is any proof that the discovery of the forgery had been made so long, if at all, before this notice was sent, as to constitute laches on the part of the plaintiffs.

Lastly, it is said that the claim of refund was not made in proper form by the plaintiffs in their notice of the 25th January; indeed the plaintiffs merely announce the discovery of the forgery and claim a refund, adding expressions which show that they then entertained an opinion (which the evidence in this case shows to be wholly unfounded) that the defendant was mixed up in the fraud; but on the 4th of February 1868 (having in the meantime been informed that defendant had "brought the *hundi* at Tanna, of one Kunyalal Joharimal-prasad") they then require that the defendant shall forthwith point out the said Kunyalal. Defendant contends, that according to plaintiffs' own evidence as to the usage, they ought to have asked him to produce a duplicate or triplicate, a demand which, if made, he would have complied with, as he had

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taken the precautions of obtaining a duplicate from Kunyalal when he had purchased the *hundi* of him, and this duplicate defendant produced at the trial. This objection, I think proceeds from a misconception of the evidence as to what is requisite in the case of a *hundi* turning out to be *forged*, as distinct from stolen or lost. The substantial requisite in case of a forged *hundi* is that the drawer of the forged *hundi*, or the person of whom the forged *hundi* has been brought, should be pointed out. Thus the *munim* of Shivlal Motilal says, "The shah, that is the person to whom the money has been paid, must point out the responsible party—if he does not he is responsible himself and must pay back the money;" and the old Indore *munim* of Ganeshdas Krishnaji said, "even if duplicate and triplicate be produced yet, if it turns out that the *hundi* is a forgery, still the money ought to be refunded."

Now, the defendant candidly admits that he has made no attempts whatever (it would very likely have been nugatory if he had) to find out Prasad Beharimal of Mayarampur or Kunyalal Joharimalprasad, merchant.

On the whole, considering that the weight of the evidence is in favour of the existence of the rule of customary law set up by the plaintiffs; considering that English law does not apply to the case; considering that the forgery has been substantially proved, sufficiently for the purposes of such a suit as this; and considering lastly, that the plaintiffs have not by acts or omissions disentitled themselves from sustaning their claim, I have come to the conclusion, though not without some difficulty and hesitation, that they are entitled to a decree, and accordingly, on the only issue raised, record a finding in their favour, and pass a decree for the plaintiffs for Rs. 3,100 with interest thereon at six per cent. from 24th October 1867 till payment, but without costs.

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