

(1906) 03 AHC CK 0001

Allahabad High Court

Case No: None

Sheo Narain

APPELLANT

Vs

Bishambhar Nath

RESPONDENT

Date of Decision: March 28, 1906

Citation: (1907) ILR (All) 166

Hon'ble Judges: John Stanley, C.J; William Burkitt, J

Bench: Division Bench

Final Decision: Allowed

Judgement

John Stanley, C.J. and Burkitt, J.

This is an appeal against so much of a decree of the Subordinate Judge of Cawnpore, dated September 24th, 1903, as makes the appellant personally liable under a decree of that date passed against him and other defendants.

2. The appellant and other members of his family constituted a joint undivided Hindu family, owners as such of trading and banking firms at Cawnpore and Lucknow. The firm at Cawnpore was known by the style of Jagat Nath Thandi Mal, and at Lucknow by that of Sheo Prasad Khazanchi. The principal defendant Lala Sheo Prasad Rai Bahadur was treasurer of the branches of the Bank of Bengal at Cawnpore and Lucknow and had occupied that position for many years. It was on his appointment to be the treasurer at Lucknow that the firm of Sheo Prasad Khazanchi was established there. That firm failed and ceased to do any new business in the early part of 1902. The present suit was instituted by the plaintiff respondent to recover principal with interest due thereon, some Rs. 6,000 or thereabouts, deposited by him from time to time in the Lucknow firm of Sheo Prasad Khazanchi, The interest, on the deposit was payable monthly, and the last payment on account of interest was in June 1902; the last deposit of principal was in October 1900. He has obtained a decree in full against all the defendants, and also a personal decree against the defendants, except those who had not attained majority. It is against this latter portion of the decree that the appellant Bishambhar

Nath has instituted this appeal. He is the eldest son of the defendant Sheo Prasad Rai Bahadur.

3. In the early stages of this suit the date at which the appellant attained majority was hotly contested. It is now however admitted that he was born on November 9th, 1883, and so attained eighteen years of age on November 9th, 1901. It is contended on behalf of the defendant appellant that though his interest in the joint family property was liable to satisfy any lawful debts contracted by the firm during his nonage, he would not be personally liable for such debts unless it was shown that after attaining majority he had taken an active part in managing the business of the firm, and so might be considered to have ratified contracts entered into while he was still a minor.

4. Now ordinarily a personal decree against a member of a bankrupt firm would not be of much pecuniary value. But the appellant from the 1st of January 1903 was appointed in succession to his father to be treasurer of the Bank of Bengal at Lucknow and subsequently at other places, and to qualify himself for that position he had to deposit Rs. 50,000 with the Bank as security for the due performance of his duties. He had no money of his own; but his mother-in-law, Musammat Tulsha Kunwar, a wealthy resident of Muzaffarpur in Bengal, having, as one witness tells us, an income of one and three-quarter lakhs per annum, according to the appellant, paid in the Rs. 50,000 in his name and so enabled him to secure the appointment. The respondent's object, as appellant alleges, is to put pressure on his mother-in-law by attaching this Rs. 50,000 in execution of their personal decree and so compel her to discharge the debts of the bankrupt firm. We are told that the amount which Musammat Tulsha and other friends have advanced to the appellant to enable him to secure the appointment of treasurer at Lucknow and other places amounts to Rs. 1,70,000. The respondents and other creditors of the bankrupt firm want to lay hands on this money.

5. The burden of proving that the appellant had ratified and taken on himself the burden of personally discharging the liabilities contracted during his minority lay on the plaintiff. Up to the close of his case in the lower Court no evidence to that effect except that of Rudra Narain had been produced, when on July 29th, 1902, the plaintiff respondent (Record No. 162) informed the Court that a quarrel had arisen between the defendant Suraj Prasad and his uncle Sheo Prasad. Rai Bahadur, father of Bishambhar Nath, one of the defendants to the suit, "in consequence of which Lala Suraj Prasad has made over documentary evidence to the plaintiff's pleader which would conclusively establish the fact that Lala Bishambhar Nath, defendant, continued to be a partner in the firm and the business of the firm styled Sheo Prasad Khazanchi, situate in Lucknow, even after attaining majority." After some objection the learned Subordinate Judge admitted those documents in evidence, and it is principally on them that he passed the personal decree against the appellant,

6. We now proceed to discuss this documentary "evidence" bearing in mind the sources whence it comes and the fact that the latest paper in it is dated in April 1902, within six months after appellant's attainment of majority, excepting one letter dated August 1902. The first of these papers to which we will allude is Record No. 171 bearing a Hindi date corresponding to February 24th, 1902. It is headed "Proceedings of a meeting held at Lucknow." It is said by Suraj Prasad to be in his handwriting and in that of Sheo Prasad's, and to have been signed by Mathura Prasad. Suraj Prasad is the person who handed it over to the plaintiff's pleader. As to this document the learned Subordinate Judge, describing it as "a scheme for the management of the business at Lucknow," remarks that in it "it is stated that the duty of Bishambhar will be to attend the Bank." Now as to this, premising that there is no evidence aliunde to show that Bishambhar Nath was present at the meeting, though very probably he was present, in our opinion the learned Subordinate Judge is wrong in the inference he draws from this document. The first portion of it is simply a list of the names of persons present, the first being Lala Sahib "Malik" (mistranslated in the paper book), referring either to Sheo Prasad or his brother Tulshi Ram, the second being Suraj Prasad, the third one Mathura Prasad Bakhshi, and the fourth Chiranji (may he live long) Bishambhar Banker ji. No duty whatever is prescribed for Bishambhar Nath. His name is recorded simply as one of the persons present at the meeting. The duties are prescribed subsequently after the last name of those present. If attendance at the Bank were prescribed as appellant's duty, it would have been mentioned among the duties assigned to the others. On the original paper is the following: "A sitting took place. Resolution adopted as follows;--So many (tine) men were present in Lucknow at the sitting." And then follows the list of names. This document in no way in our opinion strengthens the plaintiffs case. It is absolutely colourless. We next come to Record No. 152, a letter from appellant to his father, dated August 7th, 1902. We have no information as to the means by which Suraj Prasad obtained possession of this, a private letter from a son to his father. The comments made by the learned Subordinate Judge on this letter strike us as being rather extraordinary. He says: "The letter shows how Bishambhar Nath at that early stage cherished the dishonest idea of defrauding the creditors of the firm, and he, though young, points out the mistake committed by his father in coming to Lucknow and promising to pay debts to several creditors thereby admitting the liability of his branch of the family to pay those debts." "We cannot concur with the learned Subordinate Judge in his remarks. We see in the letter no indication of any dishonest desire on appellant's part to defraud the creditors of the firm. By the letter he appears to us to do no more than point out to his father how foolishly he was acting in coming to Lucknow and there making promises which he knew he could not perform. It is in fact a letter of useful advice concluding with an offer of his services. It is a document which should not have been tendered in evidence. There is also a fragment of a letter (Record No. 170) unsigned and undated, written by Bishambhar Nath to his father--how procured by Suraj Prasad we do not know--in which he transmits to his father certain

communications which his father's legal advise desired to have sent to him. Neither of these letters in our opinion helps respondent's case in the slightest. We can gather from them no indication that the appellant took any--and much less an active--part in the management of the firm after he attained majority. The Subordinate Judge also refers to a letter of July 29th, 1902, but as it has not been printed, and we have not been shown either the original or a copy, and on neither side were any remarks addressed to us on it at the hearing of this appeal, we cannot say what were its contents. As to Janki Prasad's decree all we know is that it was paid off. Next we come to two promissory notes drawn in English, dated respectively November 8th, 1901, for Rs. 1,000 at ninety days, and March 15th, 1902, for Rs. 1,000 at fifteen days" date payable to the Bank of Bengal. Both were drawn by Sheo Prasad and one Ata Ali Khan. They were paid at maturity. There is nothing, to connect them with the business of the firm of Sheo Prasad Khazanchi. They were probably only "kites" flown by the drawers. The first bears date one day before appellant attained his majority, and at the date of the second the firm of Sheo Prasad Khazanchi had ceased to issue hundis: neither of them is drawn in the name of that firm. They appear to be purely private transactions between the drawers and the payees. The Subordinate Judge mentions a third similar note, dated April 2nd, 1902, but as it has not been translated or laid before us by counsel on either side we know nothing about it. The only one of the two promissory notes shown to us which (being drawn after he had attained majority) could affect the appellant is that of March 15th, 1902. This is not a hundi, it does not purport to be issued by the firm of Sheo Prasad Khazanchi, and is no more than a promissory note at fifteen days drawn by Sheo Prasad in his personal capacity and by Ata Ali Khan. Bishambhar Nath's signature is admittedly on this note. It is written on the left hand side margin of the note by appellant who was then working in the bank and is no more than an attestation of the signature of the drawers. The appellant swears that the words "by the pen of Bishambhar Nath" following the signature of Sheo Prasad were not written by him. He says they were not on the note when it was discounted and paid off, and that they were added by Suraj Prasad after the note had been returned by the Bank on payment. Suraj Prasad denies this, but considering the part taken in this litigation by him against his cousin the appellant, and that his handwriting and that of the appellant are very much alike, we are not inclined to give much credit to him. Bishambhar Nath also says (and his assertion seems most probable) that the Bank would not discount a promissory note in which the signature of one of the drawers purports to have been written by another person. The third promissory note bearing date April 2nd, 1902, has (as already mentioned) not been printed. But from the deposition of the witness Queiros and from the matters mentioned by the Subordinate Judge the drawers appear to have been Ata Alt Khan and Sheo Prasad, the signature of the letter being in the handwriting of Suraj Prasad, We see no foundation whatever for the "irresistible inference "drawn by the lower Court that the words" by the pen of Bishambhar Nath "followed Sheo Prasad's name in this note and were there when the document was in the hands of the witness Queiros;

we think it to be highly improbable. But even if the facts were as surmised (in our opinion incorrectly) by the learned Subordinate Judge it would make no difference. This promissory note, as far as we can judge without having seen it, is of exactly the same kind as that of March 15th, 1902, that is to say, a transaction between Sheo Prasad and Ata Ali Khan with which the firm of Sheo Prasad Khazanchi had no concern. That firm also had for some months ceased doing any new business. We have no hesitation in finding that these three promissory notes do not show that the appellant took any part in the management of the" business of the firm of Sheo Prasad Khazanchi of Lucknow.

7. We next turn to the evidence of one Rudra Narain, son of the plaintiff respondent. He used to go to the firm of Sheo Prasad Khazanchi in Lucknow monthly to draw the interest on his father's deposit. His evidence is to the effect that appellant lived in the kothi of Sheo Prasad (this is not unnatural seeing that Sheo Prasad was his father), and that when he went to receive the interest he on every occasion found Bishambhar Nath, Sheo Prasad, Suraj Prasad and Chandu at the place where the money used to be paid. This is an absurd statement. The witness probably meant that he found one or other of them. He "mostly found Bishambhar Nath." In September or October 1901. (before appellant had attained his majority) he only found the munib, but appellant came in and ordered him to be paid. He further states that in January, February, March, and probably in April, 1902, he met appellant in the kothi and that the latter said: "Panditji is come, pay him the interest." In cross-examination he stated he could not remember which proprietor was present at the kothi on every occasion when he went to demand his interest. This is the only direct evidence of any interference on the part of appellant in the affairs of the firm of Sheo Prasad Khazanchi. If true, it carries but little weight, being but a solitary instance, and it is flatly contradicted by the evidence of Chadammi, an employe of the firm, and of Bindraban, one of the gumashtas who was called by the plaintiff respondent. "We attach no importance to the uncorroborated evidence of Rudra Narain. The last piece of evidence for the respondent by which he seeks to establish his case against appellant is part of that generously supplied to his opponents by Suraj Prasad at the hearing on July 29th, 1903. It consists of no less than 62 pages of closely printed tabular matter described as the attendance register of servants and employe's of the kothi from August 1899 down to June 1902. The fact that appellant's name is shown in this register is relied on as being conclusive proof that he took an active share in the business of the kothi. The learned Subordinate Judge describes this register wrongly as being one of the daily attendance of servants and proprietors. The heading of the Register refers only to servants and employes, gomashtas and the like, and nowhere mentions proprietors. He says it "shows that Bishambhar Nath attended to the family business like his cousin Suraj Prasad." Appellant's name appears for the first time in the register for the month of May 1901, and appears to have been interpolated in that month along with that of one Ganesh Prasad, there being but one line for both names. The word

"and" in the translation does not exist in the original. The witness Chidammi swore that this page is in the handwriting of Suraj Prasad, and Chidammi also swears that it was Suraj who caused appellant's name to be entered. It is to be noticed, however, that the appellant's name is entered in this and the following month among those who were employed at the Bank of Bengal and not in the business of the firm of Sheo Prasad Khazanchi. For July 1901 the register abruptly ceases on the 15th, and then we have a new register for the whole of July. It is of course impossible that this register (taken in hand only from the 15th) should be a contemporaneous daily record of attendance and yet it contains many matters previous to the 15th not entered in the discontinued register. The witness Chidammi gives us the names of the persons who wrote many of the registers. Appellant swears that none of the registers are in his handwriting. In this he is corroborated by Chidammi. In the attendance register for November 1901 there is a note on the margin purporting to have been made by appellant on December 10th to the effect that no attendance had been taken after the 23rd of November. The register, however, is completely filled up to the 30th. Appellant denies having written the note. Suraj Prasad swears that both the register for November 1901 and the note are in appellant's handwriting. Suraj Prasad also swears that the registers for several months, namely, November and December 1901 and January and February 1902 are in appellant's handwriting. Appellant denies it, and as he is corroborated by Chidammi, we believe him rather than Suraj Prasad. The bitter quarrel between Suraj Prasad and the other branch of the family and the extraordinary position taken "up by him in supplying the respondent with evidence which he thought would damage appellant's case are in our opinion good reasons why we should give more credit to the statements "of the appellant, especially where they are corroborated, than to the uncorroborated assertions of Suraj Prasad. On the whole we are of opinion that these registers in no way advance the respondent's case. We do not believe that the appellant had anything to do with keeping them, and at the utmost they do no more (if correctly kept) than show that appellant was at his father's house in Lucknow from May 1901. From other evidence we know that appellant began to attend at the Bank of Bengal from early in 1902 as his father's representative or deputy,--the Bank having refused to allow Suraj Prasad to continue to attend in that capacity and having refused him access to the Bank premises.

8. This concludes the evidence adduced by the respondent to prove his allegation that after attaining majority the appellant by an active participation in the management of the business of Sheo Prasad Khazanchi assumed responsibility for all existing contracts contracted during his minority, and held himself out to the world as one responsible for the liabilities of the firm. In our opinion, for reasons given in detail in respect of each piece of evidence, the respondent has wholly failed to establish his case. In but one instance--that of this respondent's debt, if we believe the evidence of Rudra Narain, plaintiff's son,--and we do not believe it--is

any act of active management alleged during the brief period between November 9th, 1901, when appellant attained majority and the failure of the firm in May 1902. We think the respondent has failed to support the personal decree against appellant and that as far as it declares appellant personally responsible for the debts of the firm the decree must be set aside.

9. Appellant admits that his interest in the joint family property is liable and can be taken in execution of that decree. He has no other property. But he objects to a personal decree which will put in the grasp of the creditors property which never belonged to the bankrupt firm and which has been provided for him by his mother-in-law and other friends to give him a start in life.

10. There are some other matters as to which we are unable to agree with the lower Court. We fully believe the appellant's statements as to the pecuniary assistance he from time to time received from his mother-in-law and as to her having advanced Rs. 50,000 for him. We see no reason to doubt the truthfulness of appellant's evidence as to his conversations with Mr. Logan, the then Agent of the Bank of Bengal at Lucknow, and Mr. Logan's suggestion that he should attend at the Bank with his father to learn the Bank work and a promise that if he showed himself competent he might be appointed to succeed his father. Mr. Logan was naturally anxious to know if Bishambhar Nath had any connection with the firm of Sheo Prasad Khazanchi, which was known to be shaky. The letter from the Secretary and Treasurer of the Bank of Bengal (Calcutta) of March 27th, 1901, corroborates and renders most probable appellant's evidence as to his conversation with Mr. Logan. There is evidence that appellant went to Lucknow in the middle of the year 1901, and did at once proceed to the Bank to learn his work there. And the letter also shows that the Bank insisted on Sheo Prasad putting in a new Deputy or Naib at the Bank. The then Deputy was Suraj Prasad, whose name appears so often in this case and to whose mismanagement it is said by some witnesses the failure of the firm of Sheo Prasad Khazanchi was due. The learned Subordinate Judge appears to entertain a not altogether correct idea of the position of the Treasurer of the Bank of Bengal at Lucknow. Sheo Prasad was appointed treasurer, not because, he was a member of the joint family which possessed the banking firm of Sheo Prasad Khazanchi--which did not then exist, but because he was a person in whose commercial integrity the Bank had confidence and who was able to give Rs. 50,000 as security. The appellant was appointed Treasurer from January 1st, 1903, on similar grounds. He had fully learned his work to the satisfaction of Mr. Logan (the Bank's Agent) and his mother-in-law supplied the Rs. 50,000. In connection with this matter we notice the further observation, of the lower Court that as soon as the firm failed an attempt was made to make Suraj Prasad liable for all the debts and liabilities and get Bishambhar Nath exempted from liability so that he might continue the business in his own name as the new treasurer without being required to satisfy the debts of the defunct firm." What the learned Subordinate Judge exactly means by these words it is not easy to comprehend. There was no business to

continue, as the firm of Sheo Prasad Khazanchi was extinct, and that business could not be "continued" by the appointment of appellant as Treasurer of the Bank of Bengal. We know of no attempt to make Suraj Prasad liable for the debts and to get Bishambhar Nath exempted. Both of them as members of a joint family were liable for all the debts, the only contention of appellant being that he is liable for those debts only to the extent of his interest in the joint family property, and is not personally liable. As we find that respondent has failed to make out any case establishing the personal liability of the appellant, we consider it unnecessary to discuss the questions of law raised by the learned Subordinate Judge and which were argued before us at the hearing of this appeal. We, for the above reasons, allow the appeal and set aside so much of the decree under appeal as renders the appellant Bishambhar Nath personally liable under it. Appellant is entitled to his costs in this Court.