1948 *Present :* **Dias and Basnayake JJ.**

CADER SAIBO, Appellant, *and* AHAMADU, Respondent

S. C. 48—D. C. Kandy, 1,020

Document—Dispute as to genuineness—Mere comparison with admitted writing—No finding on oral testimony.

Where there is a conflict of direct testimony as to the genuineness of a document it is dangerous to base a decision on a mere comparison o the document with admitted signatures. The decision in such a case must depend on the view formed by the Judge of the oral testimony.

APPEAL from a judgment of the District Judge, Kandy.

[1] *(1947) 48 N. L. R. 293.*

A. L. Jayasuriya, for plaintiff appellant.

C. Renganathan, with *N. Nadarasa*, for defendant respondent.

Cur. adv. vult.

March 8, 1948. BASNAYAKE J.—

The parties to this action are brothers. One Ran Banda sold the land described in deed P1 to the plaintiff-appellant (hereinafter referred to as the appellant). The defendant and one Dingiri Banda were instrumental in bringing about the sale. The purchase price of Rs. 1,500 was not paid entirely in cash. A sum of Rs. 1,200 was paid down. For the balance the appellant executed a note in favour of Ran Banda. The proceeds of the sale were shared by the defendant and Dingiri Banda. Within a few days of his purchase the appellant discovered that the land was the property of a temple and that Ran Banda had no title to it. Ran Banda was therefore made to take back the land and refund the purchase price. As he was short of money upon the execution of the deed of retransfer, the purchase price was repaid in the following manner :—

(*a*) A sum of Rs. 480 was paid in cash in the presence of the notary ;

(*b*) two promissory notes for Rs. 360 were given ;

(*c*) the promissory note given by the plaintiff to Ran Banda was cancelled.

This action is in respect of the promissory note given by Muna Kuna Seyad Ahamadu.

The appellant alleges that Muna Kuna Seyad Ahamadu mentioned in the attestation in P1 is the defendant who had to pay his portion of the refund because he had shared with Ran Banda and Dingiri Banda the proceeds of the original sale to the appellant.

The answer of the defendant is that the promissory note sued on was not given by him and that it is a forgery.

The parties went to trial on the following issues :—

(1) Did the defendant grant the promissory note sued upon to the plaintiff ?

(2) What sum is due on the said note ?

The plaintiff gave evidence in support of his claim and also called the notary who attested the deed P1. The notary stated that, although he did not know the defendant and cannot now identify him, there was nevertheless present at the execution of the deed P1 a person calling himself Muna Kuna Seyadu Ahamadu. This man gave a promissory note for Rs. 360 to the plaintiff as part of the consideration, which fact he duly recorded in his attestation. The plaintiff asserted that that man is his brother the defendant. The fact that there were other witnesses whom the plaintiff could have called in support of his case, but did not,

does not entitle us to disregard the evidence given by the plaintiff and the witness called on his behalf. That evidence establishes that the defendant was present at the execution of the deed P1 ; that he was as interested in the transaction as Ran Banda himself, and that it was in their joint interest to pay the plaintiff who had a just ground for accusing Ran Banda and himself of practising a fraud on him.

Apart from a bare denial that the defendant was either present or gave the promissory note, no attempt was made to prove the allegation in the answer that the note was a forgery.

The District Judge accepted the defendant's allegation that the promissory note is a forgery and dismissed the plaintiff's action. He formed that conclusion on a comparison by him, unaided by any expert, of the signature thereon with genuine standards produced in the case.

It is unsafe to take the course adopted by the learned District Judge. The method of comparison by formation has its shortcomings and can never be relied on as a sure guide for forming any satisfactory conclusion as to the genuineness or otherwise of disputed handwriting. A person can wilfully distort his own signature so that it may seem different from his true signature. Apart from that it should be borne in mind that the posture of the writer, the material on which he writes, the solemnity or the informality of the occasion, an unfamiliar pen, fear, nervousness, excitement are some of the factors that affect a person's handwriting.

The procedure adopted by the learned trial judge is one that cannot be encouraged. It has been viewed with disfavour by the Privy Council and repeatedly criticised by the appellate courts in India. It will be sufficient to mention here the cases of *Kessarbai v. Jethabai Jivan* [1] and *Latafat Husain v. Onkar Mal* [2]. In the former case where there is a conflict of direct testimony, as in this case, as to whether the document in question was genuine, the Privy Council laid down the rule that it was unsatisfactory and dangerous to stake a decision on the correct determination of the genuineness of a signature by mere comparison with admitted signatures especially without the aid in evidence of microscopic enlargements or any expert adviser.

The learned trial Judge has not expressed the view he has formed of the oral testimony in the case nor has he rejected the evidence of the appellant and his witnesses. We are therefore free to draw our own conclusions from the evidence, and we have no difficulty in accepting the appellant's version.

The judgment of the learned District Judge is set aside. Issue 1 is answered in the affirmative and under Issue 2 the plaintiff is declared entitled to a sum of Rs. 430·20 being Rs. 360 principal and Rs. 70·20 interest. The appellant is entitled to costs in both courts.

DIAS J.—I agree.

Appeal allowed.

[1] *(1928) A. I. R. Privy Council 277 at 281.*
[2] *(1935) A. I. R. Oudh p. 41 at 44.*