

NOTES OF CASES

THE BURDEN OF PROOF WHERE FRAUD IS ALLEGED IN A CIVIL CASE

The courts require a high standard of proof in civil cases where fraud is alleged. This was stated by the Chief Justice, Sir Alan Rose, in *Nederlandsche Handel-Maatschappij N.V. (Netherlands Trading Society) v. Koh Kim Guan* (1959) 25 M.L.J. 173.

In that case the defendant presented a cash cheque for \$3,000 at the plaintiff bank. The plaintiffs alleged that by an act of inadvertence on the part of their cashier the defendant was paid \$30,000 instead of \$3,000. The defendant denied that he had received more than \$3,000. The only evidence adduced by the plaintiff bank was that of their own employees. The Chief Justice held that where a defendant of good character was charged with fraud, more was required than the internal evidence of the bank's employees; and in the absence of corroborating evidence, such as a change for the better in the defendant's circumstances, he was not disposed to disbelieve the defendant's denial.

At the commencement of his judgment the learned Chief Justice referred to *Hornal v. Neuberger Products Ltd.* [1957] 1 Q.B. 247, [1956] 3 W.L.R. 1034, *Bater v. Bater* [1951] P. 35, [1950] 2 All E.R. 458, *New York v. Heirs of Phillips* [1939] 3 All E.R. 952, 955, and *Narayan Chettyar v. Official Assignee, Rangoon* A.I.R. 1941 P.C. at p. 95. In *New York v. Heirs of Phillips* and *Narayan Chettyar v. Official Receiver, Rangoon*, the Privy Council had expressed the view that where an allegation of fraud is made in civil cases, it must be established beyond all reasonable doubt, and the burden of proof is the same as in a criminal case. In *Hornal v. Neuberger Products Ltd.*, the Court of Appeal in England, approving an earlier judgment of Denning L.J. in *Bater v. Bater*, held that a civil court would not adopt the same standard of proof as a criminal court when considering a charge of fraud, but would require a higher degree of probability than it would in a case of negligence. The learned Chief Justice expressed the view that the difference between the two groups of cases was not as wide as it might at first appear.

It is to be regretted that the learned Chief Justice did not state clearly which of the two conflicting views he preferred. The difference in practice may not be so very wide, but a difference unquestionably exists; and it is a pity that we are still left in doubt as to whether the law in this country is as stated by the Privy Council or by the English Court of Appeal.

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