

1918.

[PRIVY COUNCIL.]

Present : Earl Loreburn, Lord Atkinson, and Sir Arthur Channel.FRADD *v.* BROWN & CO., LTD.*D. C. Colombo, 35,186.**Appeal on a question of fact—Veracity of witnesses—Rule guiding Court of Appeal.*

Where the controversy is about veracity of witnesses, immense importance attaches, not only to the demeanour of the witnesses, but also to the course of the trial, and the general impression left on the mind of the Judge of first instance, who saw and noted everything that took place in regard to what was said by one or other witness. It is rare that a decision of a Judge of first instance upon a point of fact purely is over-ruled by a Court of Appeal.

THE judgment of the Supreme Court is reported in 18 N. L. R.
302.

May 14, 1918. Delivered by EARL LOREBURN :—

This appeal is upon questions of fact, and nothing but questions of fact. It was necessary for the learned Judges below to ascertain whether there was a warranty of horse power, and whether there was a warranty of fitness to do specific work, and whether there was a breach of either or both warranties. In reality the case, which was voluminous in point of evidence, largely depended upon the truth or falsity of statements that were made by the witnesses for the plaintiffs and defendant respectively. It was upon the decision on that subject that the trial really turned, because the second warranty depended upon it, and if the second warranty was established, then the first could hardly be denied. Also, this matter has a bearing on the dispute whether there were any breaches of the contract or not. It overshadowed the whole case, and their Lordships agree with the Judge of first instance that the whole fabric of the respondents' case would fail, unless the truth of what their witnesses said was made good. Now, the learned Judge of first instance took, as well as did the Court of Appeal in Ceylon, a very serious view in regard to this controversy about veracity; they thought it was a case of deliberate falsity on one side or the other; that there was not room for misapprehension, or for the sort of error that leads to erroneous statements. Accordingly, in those circumstances, immense importance attaches, not only to the demeanour of the witnesses, but also in the course of the trial and the general impression left on the mind of the Judge present, who saw and noted everything that took place in regard to what was

said by one or other witness. It is rare that a decision of a Judge so express, so explicit, upon a point of fact purely, is over-ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in questions of veracity so direct and so specific as these, a Court of Appeal will over-rule a Judge of first instance. Was this such a case? The Court of Appeal in Ceylon thought that it was. That is not the opinion which their Lordships have arrived at. The grounds on which the Court of Appeal reversed the learned Judge have been scrutinized here and examined. Their Lordships are not able to agree with the conclusion of the Court of Appeal. On the contrary, there is a great deal of material, to which attention has been drawn, which decidedly tends to corroborate the learned Judge's opinion. That opinion is decided, strong, and unequivocal. It throws, as has been said before, a light upon the whole case, and affects every branch of the issues that were tried.

Their Lordships will, therefore, humbly advise His Majesty that the appeal ought to be allowed, with costs, and that the decree of the learned Judge of first instance ought to be restored.

Appeal allowed.

1918.

**EARL
LORNBURN**

*Fradd v. Brou
& Co., Ltd.*