

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Huttie
Doobey and others, v. Rughoonath Doobey
and others from the late Sudder Dewanny
Adawlut, North Western Provinces, Agra ;
delivered 5th March 1873.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

IT appears from what has been stated by Mr. Bell, that this Appeal clearly falls within the rule which has been laid down by their Lordships, that where two courts below have found concurrently on a pure question of fact their Lordships will not, unless in an exceptional case, review their decision. Mr. Bell has told us that the evidence is entirely oral, and that the case depends upon weighing that evidence and seeing which way the balance inclines, the question being whether certain property had been acquired for the sole use of the Appellants or for the joint use of the family. The ordinary presumption arising from Hindoo law and custom is against the Appellants ; and after a review of the evidence the courts have found the fact in accordance with the presumption. There really therefore is no ground whatever upon which their Lordships can be asked to depart from the rule which has been laid down. The other point which has been suggested by Mr. Bell is that the Appellants are entitled to half of the property instead of a third in consequence of two nephews having, as he alleges, disclaimed their interest in it. Mr. Bell

may be well founded in what he says, but upon looking at the plaint it appears that the Appellants claimed only one third of the property, and in the absence of the other parties to the suit it is quite impossible for their Lordships to vary the decree by increasing the share to which his clients may be entitled. If these parties had clearly given up their interest, some application should have been made to the courts below at an earlier period, when the parties were before them, to have the plaint amended and to have the decree which in that state of facts the Appellants might be entitled to receive.

On the whole therefore their Lordships will humbly advise Her Majesty to affirm the judgment of the court below, and to dismiss the Appeal.