

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Ramratan
Sukal v. Mussumat Nandu and Mussumat Sheo,
from the Court of the Judicial Commissioner,
Central Provinces of India, delivered November
24th, 1891.*

Present :

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Lord Watson.*]

THIS is an action brought by the Appellant in 1886, before the Court of the Deputy Commissioner, Hoshangabad, in which he has obtained decree against the Respondents as widows and heirs of Khushal, a zemindar, who died in 1878. He was survived by three widows, Mussumat Deo, the senior, who died in January 1881, and the Respondents, Mussumat Nandu and Mussumat Sheo, who are Defendants in the Court below.

The action was laid upon a bond dated the 7th November 1881, which bears to have been granted in favour of the Appellant by Mussumat Deo, who at that time was the manager of the estate. Various defences were set up by the Respondents, which it is unnecessary to notice in this appeal. There was no written statement, but the Deputy Commissioner had the pleaders of the parties before him; and after hearing them he settled issues for the trial of the cause, the third issue being:—"Was it," that is the bond sued on, "executed by Mt. Deo, patelin, if so, are Defendants two and three," that is

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the two Respondents, "liable for the money due " on the bond"? Now it was clearly the duty of the Appellant to prove, in order to make his claim under the bond good against the estate in the hands of the Respondents, that the senior widow duly executed the bond, because it is her intelligent signature, in the capacity of a Hindu widow representing the estate, which alone could give validity to such a document.

The Deputy Commissioner found in favour of the Appellant on the third issue; but the case was taken by appeal to the Court of the Commissioner, Narbada Division, who found on that issue for the Respondents. He intimated an opinion in his judgment, that the case made by the Appellant to the effect that the widow executed the bond with her own hand did not stand the test of probability, when the evidence was examined, but he did not embody that view in his finding, which was in these terms:—"I hold therefore, that the bond was not executed " by Mt. Deo with a full knowledge of all the " circumstances of the case, and that there was " no *bond fide* execution as far as Mt. Deo is " concerned." It appears to their Lordships that the *onus* of proving due execution lay upon the Plaintiff, who relies upon the signature of a Hindu widow as binding the estate which she represented. That point was made the subject of comment by this Committee in the year 1880, in the case of *Baboo Kameswar Pershad v. Run Bahadoor Singh* (L.R. 8, I.A. 8).

The case was appealed to the Judicial Commissioner, who expressed an opinion—their Lordships do not think he meant to pronounce any finding—upon this point. He said, "I may " add, however, that it appears to me very " probable not only that Mt. Deo did put her " seal to this bond, but also quite understood

“ what she was about.” It has now been conclusively settled that the third Court, which was in this case the Court of the Judicial Commissioner, cannot entertain an appeal upon any question as to the soundness of findings of fact by the second Court; if there is evidence to be considered, the decision of the second Court, however unsatisfactory it might be if examined, must stand final. If, therefore, the finding of the Commissioner upon the third issue cannot be successfully impeached by the Appellant his case must necessarily fail.

The argument of the Appellant's Counsel satisfied their Lordships that the decision of the third issue one way or another mainly depended upon the credit which ought to be given to oral testimony of a conflicting character; and that the finding of the Commissioner upon that evidence was substantially a finding of fact.

Their Lordships will therefore humbly advise Her Majesty that the Judgment appealed from ought to be affirmed, and the Appeal dismissed with costs. The Appellant must pay to the Respondents their costs of this Appeal.

