Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rani Srimati (deceased) and Others v. *Khajendra Narayan Singh and Another, from the High Court of Judicature at Fort William in Bengal; delivered the* 14*th May* 1904.

Present at the Hearing:

LORD MACNAGHTEN.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The question raised by this Appeal is whether there ought to be a new trial of a pure question of fact which two Courts in India have decided against the Appellants. Counsel for the Appellants felt the difficulty of supporting an Appeal under such circumstances, but they contended that there ought to be a new trial on three broad grounds, viz.:—

1. That there had been a gross miscarriage of justice.
2. That a mass of evidence had been improperly received.
3. That a particular document (referred to as Exhibit 3), which was practically decisive of the case, if genuine, was so clearly proved to be a forgery that grievous injustice would be done if the decisions appealed from were allowed to stand.

Their Lordships heard Counsel on all three points at considerable length and have come to the conclusion that none of them ought to prevail.

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The first ground really depends on the second and third, and their Lordships will so treat it.

The action which has given rise to the Appeal was brought by the first Respondent (the Plaintiff in the action) to have it declared that he was entitled in reversion (on the death of a lady who has since died) to a large estate in the district of Tirhoot which formerly belonged to Raja Sridhar Narayan Singh. He died in 1844 intestate, without children born in his lifetime, but leaving a widow, Rani Srimati, who was with child. She gave birth to a daughter, and the Defendants claim his estate and are entitled to it by the Mithila law if the widow had no other child. The Plaintiff however alleged that the widow had twins and that the twin child was a son named Tejdhar Narayan Singh who died some six or seven months after he was born. If this is true it is now conceded that the Plaintiff (*i.e.*, the first Respondent) is entitled to the estate and ought to succeed.

On the death of Raja Sridhar Narayan in 1844 his widow was a mere child 14 years old or thereabouts, and his mother took possession of the estate; but in 1867 she made over the bulk of it to the widow. The mother died in 1869. Since that time the widow and her daughter and the Defendant claiming under them have been in possession of the estates. In 1893 the widow and daughter conveyed their interests in the estates to the Appellant Sasidhar Narayan Singh and put him in possession, and he has been in possession ever since. The widow has died since these proceedings commenced. The burden of proving the Plaintiff's title to the estates on the death of the Raja's widow was obviously on the Plaintiff. A vast mass of evidence both oral and documentary was adduced at the trial. The oral evidence was extremely conflicting and by no means trustworthy. The documentary evidence was far

more important but was by no means consistent throughout; nevertheless when carefully examined both the Court of First Instance and the Appellate Court came to the conclusion that it established the Plaintiff's case, and their Lordships are not prepared to differ from them.

The documents which the Appellants' Counsel contended were not admissible against him were objected to on the ground that they were *res inter alios acta* and did not come within any of the classes of evidence enumerated in Section 32 of the Indian Evidence Act, 1872. This would have been a formidable objection if the documents had not been admissible against persons through whom the Appellant Sasidhar claimed. But when looked into, the documents objected to appeared to have been clearly evidence against the Raja's mother and widow. The most important were statements made by themselves and are clearly admissible against Sasidhar himself who claimed under them. This objection, therefore, falls to the ground.

The document Exhibit 3 is dated 19 December 1844 and is a petition for the appointment of a guardian for the protection of the Raja's estates against some execution proceedings. The Petitioners were the Raja's mother and widow. The statements in it must therefore be regarded as their statements if the document is worth anything. As translated, the Petition mentions the fact that the Raja's widow had a son, and that she and her mother were his guardians but were not able to take care of the estates.

The original of this document, which was written in Persian characters, was produced before their Lordships and it was plain that it was written on two pieces of paper fastened together and of very different textures. Affidavits recently obtained in this country from skilled witnesses were also tendered and read *de*

bene esse and without prejudice to any question. These affidavits stated that "son" in the translation should be "child," and that the handwriting on the lower part of the paper was not the same as that on the upper part; and that different pens were used. There can be no doubt that this is a very suspicious document, and their Lordships are far from satisfied that in its present shape it is genuine throughout. But correcting the word "son" and substituting "child," the fact remains that the top part of the document, the genuineness of which is not impeached, talks of guardians, and this points unmistakeably to the existence of a son and not of a daughter only. But what weighs with their Lordships more than anything else is that there is a later document, Exhibit 21, dated the 9th January 1845, the original of which was produced in the courts in India. This document refers to a petition which was apparently the Exhibit 3, and mentions a minor son of the Raja's widow and that his grandmother and mother were his guardians. In the face of this document which their Lordships see no reason to regard with suspicion they feel that there are no sufficient grounds for overruling both the Courts in India and for sending the case back for a new trial.

The case is unquestionably one of great difficulty, but the Appellants have failed to show any miscarriage of justice, or the violation of any principle of law or procedure. Their Lordships therefore see no reason for departing from the usual practice of this Board of declining to interfere with two concurrent findings on pure questions of fact.

Their Lordships will therefore humbly advise His Majesty to dismiss this Appeal and the Appellants must pay the costs of it.