Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lalla Beharee Lall v. Mussumat Gopee Bebee and others, from the High Court of Judicature at Agra, North-Western Provinces of Bengal; delivered 19th July, 1872.

Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague Smith.
Sir Robert P. Collier.

Sir Lawrence Peel.

THEIR Lordships are of opinion that no special ground has been shown on which this case ought to be excepted from the general rule against disturbing the concurrent judgments of two Indian Courts upon a pure question of fact; that if this were treated as an exceptional one it would be difficult to apply the rule to any future case.

The Appellant brought his suit to oust the parties in possession on the ground that he became entitled to the property, as next heir, on the death of one Bowanee Pershad, who died in August 1855. To make out his title he had to establish two facts: first, that he stood to Bowanee Pershad in the relationship that he alleged; and, secondly, that being joint in estate with Bowanee Pershad his title as nearest male heir overrode the rights of the Respondents, the widows of Bowanee Pershad, and of his two brothers who predeceased him.

The first issue has alone been tried, and both

Courts have found that upon it the Appellant failed to prove his title, which was founded on the allegation that he and Bowanee Pershad were descended from a common ancestor, one Lalloo Mull, the former being the grandson, the latter, the great grandson, of that person.

It may be observed that the Appellant came into Court with a considerable presumption against him, arising from the fact that he had slept on his alleged rights, and failed to bring his suit for twelve years after the decision of the Collector in the proceeding for the mutation of names, wherein this question of heirship was raised.

Both Courts have concurred in treating the oral testimony adduced by him as untrustworthy. They have weighed the effect of the proceeding before the magistrate in 1844, and of the circumstances proved concerning the dwelling-houses of the parties, and have come to the conclusion that these ought not to turn the scale in the Appellant's favour. It is obvious that the weight to be given to the latter circumstances is a question, which Judges in India are far more competent than their Lordships can be, to determine.

Their Lordships, moreover, are prepared to say that, if they were trying the case as a Court of First Instance, they would have thought, upon the evidence before them, that the Appellant had failed to prove his title as alleged, though they might have hesitated to assert that there was no relationship between the parties, or that the case of the Defendants on that point was wholly true.

In these circumstances they can only humbly advise Her Majesty to dismiss this Appeal with costs.

They wish further to observe, with reference to the elaborate and ingenious criticism to which the Judgment of the Principal Sudder Ameen has been subjected in this case, that the only objection to that Judgment which they would be inclined to take, is to the generality of his observations as to certain witnesses having given evidence in other cases.

It is no doubt a legitimate objection to a man's credit that he is a professional witness, but to state broadly and generally, that a witness has given

evidence in other cases, and therefore becomes unworthy of credit, can only tend to increase that indisposition of respectable persons to come into Court as witnesses, which is one of the social evils of India.

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