

Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Kishori Lal v. Chunni Lal (No. 46 of 1907), and of Kishori Lal v. Chunni Lal (No. 47 of 1907), from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 15th December, 1908.

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Atkinson.*]

These are Consolidated Appeals from two decrees of the High Court of Judicature for the North-Western Provinces, Allahabad, dated the 12th July 1904, by which the decrees of the Subordinate Judge were reversed.

The main question for decision in the suits in which these decrees were pronounced, and the sole question for the decision of their Lordships on these Appeals, is one of fact, namely, whether Musammat Lachchho, a *pardanashin* lady who is illiterate, the widow of one Dwarka Das, deceased, adopted, with the permission or by the direction of her husband, given shortly before his death, the Respondent, Chunni Lal, as his son. The burden of proving the adoption rested on him. The lady denies on oath most

positively that she ever adopted the Respondent. The Subordinate Judge held that the evidence showed he had not been adopted, and decided against him. The High Court decided in his favour. The case is a most perplexing one, but the difficulty which their Lordships have found in coming to any confident conclusion on the point on which the courts in India differed, does not arise so much from the direct conflict between the evidence of the witnesses examined on behalf of the respective parties, as from three matters for the latter two of which the Respondent is entirely responsible, namely, (1) the non-production of any account-book containing items relating to the expenses of the ceremony of adoption, which, if his witnesses speak the truth, took place in the small village of Thulai, and was a prolonged and somewhat pompous function at which 1,600 guests were feasted; (2) the suppression of three day-books and three ledgers which were in his, the Respondent's, custody and keeping; and (3) his non-appearance as a witness at the trial before the Subordinate Judge, though several transactions to which he was a party were proved to have taken place, which called imperatively on him for an explanation.

As to this last matter, it would appear from the judgment of the High Court that in India it is one of the artifices of a weak and somewhat paltry kind of advocacy for each litigant to cause his opponent to be summoned as a witness, with the design that each party shall be forced to produce the opponent so summoned as a witness, and thus give the Counsel for each litigant the opportunity of cross-examining his own client. It is a practice which their Lordships cannot help thinking all

judicial tribunals ought to set themselves to render as abortive as it is objectionable. It ought never to be permitted in the result to embarrass judicial investigation as it has done in this instance.

The relations subsisting between Musammat Lachchho and the different members of the Respondent's family, the circumstances under which, and the manner in which, her business was carried on and her affairs managed, make the three above-mentioned facts all the more significant.

Dwarka Das, a resident of the village of Thulai, in the District of Aligarh, died in the year 1854 possessed of considerable moveable and immoveable property situate in this and some neighbouring villages, leaving his two widows, Musammat Jasoda and Musammat Lachchho, him surviving. He was a childless man. Musammat Jasoda, who was much the elder of the two widows, died in 1863. Musammat Lachchho, who had only been married in the year 1852, is still alive. Dwarka Das had a relative, a first cousin once removed, named Maya Ram, who at one time lived in the village of Punner, not far from Thulai. He was by Dwarka Das appointed agent to help in the management of the latter's affairs. After the death of Dwarka Das, Maya Ram continued to act as agent for the widows, and the survivor of them, Musammat Lachchho, up to the time of his own death in the year 1891, residing with them for a portion of that time, and always taking his food where he did his work. Maya Ram had three sons, Deokaran, the eldest, Moti Ram, and Chunni Lal (the Respondent). Deokaran was associated with his father in the management of

the estate, and after his father's death continued to manage it up to the time of his own death in the year 1891, when the management was taken up by Chunni Lal, aided by Radha Kishun, who was appointed to assist in the business about six or seven years afterwards. Radha Kishun was married to the daughter of Deokaran, is the attorney of the Respondent, superintends this litigation on the latter's behalf, and must therefore be privy to the suppression of the evidence above referred to.

On the 23rd April 1880 Musammat Lachchho executed a power of attorney in the widest possible terms, appointing Deokaran her attorney, empowering him (amongst other things) to institute and defend suits, receive rents, grant leases, release any debt, obtain in her favour any bond relating to money dealings, and to have the same registered, or to execute any bond on her behalf, or file in or take back any document from any court. The endorsement on this instrument describes her occupation as "zemindari and money dealings." From documents put in evidence by the Appellant, it is plain that Musammat Lachchho had money dealings with her customers in large amounts.

This business of hers appears to have been carried on in a portion of a house called the *haveli* house or *kothi*. At first Deokaran, like his father, took his meals in the *kothi*, and for a time apparently lived there. Subsequently Musammat Lachchho gave the site of a house for Deokaran, or had a house built for him, and from the time the house was built, father, son, and their families lived in it. The Respondent, however, has lived in the lady's house for the last 25 or 26 years.

The mode in which her business was carried on was this : all moneys due were recovered and received by, and all disbursements made through the hands of, the agents, and as remuneration they received a certain share of the profits of the business, and were responsible for the loss of capital employed. This is clear from the uncontradicted evidence of Ganga Pershad, one of the Appellant's witnesses, and from the extracts from the diaries filed on the latter's behalf. He states :—

“ I used to come to examine the accounts kept by
 “ Maya Ram, Deokaran and Jai Singh. . . .
 “ Maya Ram had 2, then 2½, and, at the time of his
 “ death, 3½ *rozgars*. The amount of one *rozgar* is
 “ Rs. 500, and profits are received on account of it.
 “ First the interest due to the banker is paid off, and
 “ then the profits are paid. If there is a loss, its
 “ amount is recovered from them (*gumasthas*). If
 “ there is a deficiency in the principal, it is made
 “ good. Deokaran had 2, then 2½, and then 3 *rozgars*.
 “ Chumni Lal had 3½ *rozgars*, as also Lachman Das.
 “ There were seven extra *rozgars*. . . . Chumni
 “ Lal's sister was married to my maternal uncle's son.
 “ Her marriage took place in another house given by
 “ Lachchho. The money for expenses was received
 “ from Lachchho on the condition that the same would
 “ be deducted from Maya Ram and Deokaran's
 “ *rozgars*. . . . There are two sorts of account
 “ books, viz., (1) those relating to the business carried
 “ on by [the] proprietors alone, and (2) those relating
 “ to *rozgars*. . . . Lachchho also had two sets
 “ of account books of the sort mentioned by me.”

The extracts from the *roznamchas* (day-books) put in evidence by the Respondent strongly corroborate this witness's evidence.

This mode of doing business necessitated the keeping of two sets of books, (1) day-books containing the receipts and expenditure for each day, and (2) ledgers in which the principal and her agents were respectively

debited and credited with the proper sums in the separate accounts of each. Without these ledgers it is impossible to ascertain who ultimately bore the burden of any expenditure recorded in the day-books. As far as the books produced are concerned, there is, therefore, no proof whatever that the expenses of Chunni Lal's marriage were really borne by Lachchho. She herself says she advanced the money for the marriage and that it was disbursed. If the ledgers were produced, this matter would most probably have been cleared up. That ledgers existed is established by the admission of the Respondent himself. In the year 1894, he instituted a suit in the joint names of himself and Lachchho against one Kunj Lal. On the 14th January 1895, a list of documents was produced with the plaint. It is signed by Radha Kishun as agent for Musammatt Lachchho, and contains the following item :—

“ Eight account books, *i.e.*, 5 day-books and 3
 “ ledgers from Sambat 1920 to Sambat 1950, relating
 “ to the Plaintiff's business.”

No ledgers whatever have been produced, in these actions, by the Respondent, and only two day-books. The only witness who purports to account for their disappearance is Radha Kishun who verified this list. He deposes as follows :—

“ The goods and property of the *kothi* (firm) are in
 “ Chunni Lal's possession. . . . My pay is
 “ Rs. 100 a year. I wrote the account books and
 “ performed the court business. I saw those account
 “ books also which were at the time prior to my
 “ entering the service. I did not see the account
 “ books of the time of Dwarka Das. I have seen the
 “ account books from Sambat 1929. I might have
 “ seen some account books of the time prior to this
 “ also. I saw them in the *kothi*. The *haveli* house
 “ is called *kothi*.”

His examination was continued on the following day, when he again returned to this subject and deposed:—

“ The account books, in reference to one of which I
 “ made my statement yesterday, were in existence.
 “ They were in that very house in which Chunni Lal
 “ lived. Now I hear that they are missing. Perhaps
 “ they might be locked up. . . . The account
 “ books were filed in connection with the case of Kunj
 “ Lal. I do not recollect the period for which the
 “ account books were filed. They were subsequently
 “ taken back from the court and had been kept in the
 “ *kothi*.”

The only rational conclusion which can be drawn from this testimony is that evidence of a most important character has been deliberately suppressed by the Respondent. That fact, coupled with his non-production as a witness, covers his case with suspicion. The account books which have been produced, however, cover the period of his alleged adoption in the year 1877. It must, if it took place, have attracted the attention of almost every inhabitant of the small village of Thulai, and involved considerable expense. The accounts put in evidence on both sides are most detailed in character. Petty items of expenditure down to a fraction of a rupee are duly recorded under many heads. Having regard to the well-known habits of the people of India, as well as to the mode in which the business of this firm was carried on, it is inconceivable that, if this ceremony of adoption ever in fact took place, an account would not have been kept of expenditure incurred in respect of it. Yet there is only one item (a disputed one) of Rs. 5 in the accounts produced in which the word “adoption” is mentioned. It occurs in the middle of the items relating to the marriage of Chunni Lal in the year 1878, and, in their Lordships’ opinion,

plainly refers to this latter event. Many witnesses have been examined on both sides. They are of somewhat the same class and character—Zemindaris, money-lenders, persons accused of serious crime though not convicted, inhabitants of the village of Thulai and the adjacent villages; numbers of them of the same brotherhood, some of the same *gotra* as the Respondent, many mere cultivators. They flatly contradict each other on almost every important point. Several of the Respondent's witnesses not only prove that Dwarka Das before his end gave permission to his wives to adopt a son and gave directions to build a temple to his memory; but, with a vividness of recollection which is almost supernatural, purport to repeat the very words used by him for that purpose more than half a century before they themselves spoke. Others, again, purport to describe the most minute details of the ceremony of adoption, and to repeat the very words used by Maya Ram when he gave over his son, then 9 or 10 years old, to Lachchho and placed him on her lap, though that event must have occurred close on 25 years before the evidence was given.

In addition, many of the Respondent's witnesses depose that, on the occasion of the dedication of the temple built by Lachchho near a place called Soron to the Idol Dwarka Dhish, certain religious ceremonies were performed by Chunni Lal, because he was the adopted son of Dwarka Das, while almost as many witnesses examined on behalf of the Appellant—including the priest of the temple, Gopi Nath, who was present both at the ceremony of *pratishtha* (the placing of the Idol in the temple for the first time) performed in 1883, and the *khamb* ceremony performed in 1893—proved that both of

these ceremonies were performed by Lachchho herself, because Chunni Lal was not the adopted son of Dwarka Das, and that invitations to these ceremonies (two of which were produced) were sent out in the name of Dwarka Das, not in the name of his son, as they would have been had he been adopted. The inhabitants of Thulai examined on the Appellant's behalf denied that such a remarkable ceremony as that of the adoption described ever took place in their village, while the members of the brotherhood and others examined on the respective sides proved that Chunni Lal passed and was known amongst his brotherhood and neighbours as the adopted son of Dwarka Das, or the son of Maya Ram, his natural father, and not the adopted son of Dwarka Das, according as they were examined for the Respondent or Appellant. It is impossible to reconcile these conflicting statements on any theory of the defective memory, or failing powers of observation, of the several witnesses who thus contradict each other. The only safe guide to follow in such a case is that afforded by the action and conduct of the principal parties concerned, and the contents of the documents produced. If Chunni Lal was adopted in the year 1877, as alleged, he became the absolute owner of the considerable property, moveable and immoveable, of which Dwarka Das died possessed, Musammatt Lachchho being only entitled to her maintenance out of it; yet down to the time he began to quarrel with her (save in certain matters to be hereafter specially dealt with) not only did he never exercise the rights of an owner over the property, but he did not even assume the airs of ownership. He came of age, according to the Hindu Law, when he was 16, *i.e.*, about 1883, and according to the Indian Majority Act, 1875 (No. IX. of

1875), about 1885. Yet, after he reached the age of manhood, he continued for years to act as paid agent over the estate—which, if he was adopted, was his own—at a salary the same in amount as his father received, namely, $3\frac{1}{2}$ *rozgars*. Musammat Lachchho has continued down to the present to be the registered owner of all the real property belonging to Dwarka Das in the *khewats* of the several villages in which that property is situated. Only once does Chunni Lal's name appear in any *khewat*, and then he is registered as the cultivator of a certain grove, and is described, not as the adopted son of Dwarka Das, but as the son of his natural father, Maya Ram. The income from these several villages was recovered and received by Musammat Lachchho in her own name, through the hands of her several agents, including the Respondent.

It is not suggested that there was any agreement or arrangement that she should be permitted to remain registered as owner of these lands and act in all respects in that character. The Respondent, in his written statement filed in the first action, says her name was “caused to be entered simply to console her.” From a time, however, long prior to the adoption down to a recent date, she carried on this business of a money-lender. It may be fairly presumed that it was lucrative, else she would have abandoned it. Maya Ram, Deokaran, and Chunni Lal were her agents for that purpose. Yet, though several documents connected with this business were given in evidence, in none of them of an earlier date than the 15th July 1888 does the Respondent's name appear, or is any mention whatever made of the adoption.

That, however, is not all. In corroboration of those of the Appellant's witnesses who stated

that Chunni Lal passed and was known among his brotherhood as the son of Maya Ram, his natural father, and not as the adopted son of Dwarka Das, a deposition made by him was put in evidence, from which it appeared that in a public court in December 1892 he deposed on oath that his name was Chunni Lal and his father's name Maya Ram. On the 7th January 1896 he signed a *vakalatnama*, executed in a pending suit, in which he described himself as son of Maya Ram. Again, on the 15th July 1898 he signed a similar document, drawn up and executed in a suit instituted by himself, which contains a similar description. A fourth document, possibly the most significant of all, was also given in evidence, namely, a list of biddings at a public auction held on the 21st October 1895, at which he purchased some property for Rs. 1,200, in which he is described as "Chunni Lal, son of Maya Ram." It may be that the significance of these descriptions can, as was contended on his behalf, be explained away; but if so, the explanation should be given by the Respondent himself upon oath, and he has abstained from giving it. As they stand, unexplained, they are inconsistent with his case, and support on this point the evidence given on behalf of the Appellant.

It is, however, contended on the Respondent's behalf that the several documents now about to be referred to discharge the burden of proof which rests upon him, and establish the fact of his adoption.

It is necessary to examine them in detail.

The first four are money-bonds executed in favour of Musammam Lachchho and Chunni Lal, who is described as the "adopted son," not of Dwarka Das, but of Lachchho. The considera-

tion for two out of the four is a previous debt due to Lachchho alone. The first in date may be taken as a sample of the others. It is a hypothecation bond dated the 16th June 1888, executed by Jamna and Lekha, two sons of Man Singh, deceased, for a sum of Rs. 800 due "to Musammat Lachchho, wife of Dwarka Das, and Chunni Lal, adopted son of Musammat Lachchho aforesaid." It is witnessed by Kadher Mal, one of the Respondent's witnesses, who, in reference to it, deposed that it was written under Deokaran's supervision; that it was not read out to him; that he thought the bond was made in favour of Lachchho; and that the bond at the time of its registration was not read out by the sub-registrar to the executants, one of whom (Jamna) appears to be illiterate.

The fifth document is a Petition dated the 8th June 1891, purporting to have been presented on Lachchho's behalf by her pleader Lokman Das, praying that "her adopted son, Chunni Lal," might be appointed her *sarbarahkar*. It is signed by Deokaran as her mukhtar on her behalf. Like the four preceding documents, it is altogether his work. Lokman Das, her pleader, was examined, and stated that Lachchho never came to him on any occasion, and there is nothing to show that the contents of any one of these documents were ever brought to her knowledge.

In the month of February 1893, after the death of Deokaran, a suit was instituted in the name of Musammat Lachchho against one Gajadhar Singh to recover the amount of a promissory note, dated the 30th December 1889, executed in her favour by Gajadhar Singh and his father, Chet Ram. The pleaders for her in

that case were Lokman Das and Jogindar Nath. The latter states that Chunni Lal gave him instructions and came to him to look after the case, and that Lachchho never came to him. The Defendant in his written statement raised, on information and belief, the defence that the Plaintiff could not recover, as she had adopted Chunni Lal, and that all the property of Dwarka Das, of which this note was part, vested in him. The statement or reply, if any, filed in answer is not in the record, but from the judgment of the Subordinate Judge of Aligarh it would appear that the defence put forward on Lachchho's behalf, presumably on Chunni Lal's instructions, was that she had adopted Chunni Lal as the son of her late husband, but that, notwithstanding this adoption, she had been and was in possession of the money-lending business inherited by her from her late husband, and the decision was to the effect that it was clear upon the evidence that the Plaintiff was herself in possession of the money-lending business, and that, as owner in possession as well as the promisee of the note, she was entitled to sue. A good deal of suspicion attaches to these proceedings. They appear to disclose something like contrivance on Chunni Lal's part to get upon the record an admission of his adoption which would not affect the result of the proceedings. Had the suit failed, Lachchho would possibly have heard of the failure, but she would most probably know nothing of the averments contained in the pleadings. From first to last the efforts of Chunni Lal and his brother Deokaran seem to have been directed to bind Lachchho by descriptions of Chunni Lal as her adopted son, introduced into instruments upon the operation of which that description

could have no effect whatever, and which would probably never be known to her.

The only other documents with which it is necessary to deal at length are (1) those connected with a suit which purported to be instituted on the 12th November 1894 in the names of Musammat Lachchho and Chunni Lal, described as "adopted son of Dwarka Das," against one Kunji Lal and Duli Chand to recover possession of a shop in the market town of Hathras, part of the estate of Dwarka Das, in which a compromise was entered into, and (2) those connected with a grant of land made to endow the temple erected by the widow to the memory of her husband, at Soron, because these are the only documents whose contents there is any evidence to show were brought to the knowledge of Musammat Lachchho. In the suit against Kunji Lal and Duli Chand, Lokman Das was again the pleader for the Plaintiffs. He is not able to state whether he was instructed by Chunni Lal or some other agent of Lachchho's. The claim contains averments that:—

" In his lifetime Dwarka Das was in proprietary
" possession and enjoyment of the said shop, and
" since his death Musammat Lachchho, Plaintiff,
" has been in proprietary possession and enjoy-
" ment thereof for about 40 years and Chunni Lal,
" Plaintiff, who is joint with her, has been in
" possession and enjoyment of it since the time of
" his adoption."

A compromise was arrived at to the effect that the Plaintiffs should obtain a decree for possession, the Defendants to obtain proprietary possession of the house on paying a lump sum of Rs. 1,500, with interest, within a certain time, and the costs of this and of a preceding suit instituted by the widow alone for rent not to be recovered.

This compromise was embodied in a memorandum entitled "Chunni Lal and Musammat

“ Lachchho, Plaintiffs, v. Kunji Lal and Duli Chand, Defendants.” It is signed by Chunni Lal, Duli Chand and Kunji Lal. It does not contain, in the body of it, any reference whatever to the fact of adoption, and except that the plural “ Plaintiffs ” is once used in it instead of the singular “ Plaintiff,” it might, as far as its language is concerned, have been drawn up between Lachchho alone and the Defendants. This memorandum was filed in Court, and a decree in the suit was on the 13th May 1895 made upon the basis of it. Before decree, however, one Ahmad Husain, an officer of the Munsif’s Court at Hathras, went to the village of Thulai to get the compromise verified by Musammat Lachchho. He says that he read over and explained to her the contents of the memorandum, but on cross-examination he admitted that he did not remember whether any “ mention of the adoption was made.” Unless he read out the title and emphasised the plural *Plaintiffs*, there is nothing whatever in the document to suggest to Lachchho that she was not suing in this suit, as she had in the previous suit sued, for rent in her own name and in her own right. In this latter suit she was defeated, not on any non-joinder point, or because she was not owner, but solely for the reason that the agreement to pay rent for the shop had not been satisfactorily proved. Ahmad Husain states he drew and signed an attestation clause on this document—in which it is stated that Musammat Lachchho “ heard and understood the contents ” of the compromise—and duly attested the same. It purports to bear her mark. And the names of Kanhai Ram and Radha Kishun are signed as witnesses. Kanhai Ram was not examined. Radha Kishun swears that “ the written statement ” (presumably the

compromise) was read over to her, and that she put her mark to it. He says nothing about her having understood it, or about its having been explained to her. On that evidence it is, in their Lordships' opinion, impossible to hold that Musammat Lachchho was fixed with the knowledge that Chunni Lal was joined with her in the suit as the adopted son of Dwarka Das, or that he was so described on the record.

The documents in the case on which the Respondent most strongly relies are those connected with the endowment of the temple at Soron. They are three in number: (1) A Tamliknama bearing date the 29th July 1899; (2) a special power of attorney dated the 8th August 1899; and (3) a special power of attorney dated the 10th August in the same year. They each purport to be executed by Musammat Lachchho and Chunni Lal, who is described in each of them as the adopted son of Dwarka Das, and made a party to them in that character.

The Tamliknama contains many long and complicated recitals, and amongst others the following:—

“ According to the custom of my caste and the
 “ members of my brotherhood and under lawful
 “ authority and by the permission of my husband, I
 “ adopted to him Chunni Lal during his minority
 “ and made him his successor, after performing
 “ religious ceremonies and carrying out the injunctions
 “ of the Hindu law. He (Chunni Lal) has now
 “ attained majority and he lives jointly with me and
 “ looks after all the affairs relating to the estate of
 “ Dwarka Das. In accordance with the will of my
 “ husband, I, the Musammat, constructed at Soron, at
 “ the place where the Hindus perform worship, during
 “ the minority of the aforesaid Chunni Lal, a pucca
 “ stone building called Kunj at the cost of Rs. 50,000,
 “ under the supervision and management of Maya
 “ Ram, the natural father of the aforesaid Chunni Lal;
 “ and in Sambat 1940, I, after Chunni Lal, one of the

“ executants, had attained majority, installed therein
 “ Thakur Dwarka Dhish Maharaj after performing the
 “ *pratishtha* ceremony according to the principle of
 “ the Hindu law.”

The document then proceeds to declare, in its operative part, that the Thakur therein named shall remain in proprietary possession of the landed property therein described, in order to pay thereout his salary, and have the temple at Soron cleaned and kept in repair, &c. By the first power of attorney Radha Kishun is appointed attorney to procure a mutation of names in the registry in respect of this property so dedicated, and the second power of attorney is to somewhat similar effect. Musammat Lachchho in her evidence admits that she had built this temple, desired to endow it, and executed a deed for that purpose in favour of Thakurji, the deity named in it. She, however, positively denies that the deed was ever read over to her. She must have been about 60 years of age at that time, and she says her sight was dim. She admits that the registrar came to her house about the deed. She says that she sat behind the curtain, and he outside it; that he asked her if she had executed a deed in favour of Thakurji, and she replied yes; that he questioned her about the property she had given over to Thakurji, and she told him it was the property of Jabangirpur and Tor. She says that the deed was not read out to her by any of those present when she witnessed it, that she asked them to have it read out to her, and was told it would be read out afterwards. She further says that the registrar did not read it out, but merely told her it was a deed of gift to Thakurji. If this account be true, it is obvious that nothing occurred to call her attention to the statements in the deed concerning Chunni Lal's

adoption, and in the face of her evidence it is incumbent on the Respondent to establish conclusively that these particulars of the deed were brought to her notice before he can in any way rely upon them as admissions as against her. The deed was tendered for registration, and before its registration the sub-registrar in Hathras called upon her in order to verify it. In his certificate he states that she "admitted the completion and "execution of this document after hearing and "understanding the same." He was examined as a witness. His evidence is rather extraordinary. He does not deny that she was inside the curtain and he outside, but he says that he read it over to her word for word; that his clerk also read it over to her; that he asked her if she understood the document word for word; that she replied, "I executed the document and I have understood it"; that she then added, "Chunni Lal is my adopted son"; that he said to her, what was the necessity of making mention of adoption therein, and that she replied, "I have made mention (of it) herein "to make the matter more secure so that no "dispute may arise in future." He admitted that he had not noted down that Lachchho had told him she had made the adoption. This witness proves rather too much. His clerk, who is alive, was not examined. His business would naturally be to find out if she knew that she was disposing of property by this deed, what was its nature and extent, and what was the purpose of the disposition. If the Respondent's case be true, his adoption had been notorious for 22 years. Radha Kishun says that he also read the *vakalatnama* and power of attorney to Lachchho. Girdhari Lal, who was a witness to both this deed and the power of attorney

of the 10th August, was not produced. Ram Parshad, whose name appears on the power of attorney of the 8th August, was called; he admitted that he drafted this document and said he read it over to Lachchho. He also states that both Lachchho and Chunni Lal said the latter was her adopted son, and then makes the extraordinary statement that it was suggested that the name of Musammat Lachchho should be expunged. According to this evidence the deed was read over to Lachchho three or four times, on as many separate occasions by as many different persons. Why this repetition? It is evident that Chunni Lal and his attorney, who is charged with the duty of superintending this litigation on his principal's behalf, and is therefore party to the suppression of evidence, arranged this entire business. Their Lordships are not satisfied that the passages of these documents dealing with the adoption of Chunni Lal were brought to the knowledge of Lachchho and their effect explained to her, though the gift and declaration may have been. It was entirely collateral to the main purpose of the deed thus to record what, according to the Respondent, was a notorious fact. Their Lordships cannot concur with the High Court that the fact that these or any other documents of the like kind containing such collateral recitals were registered and acted upon raises any presumption whatever that Lachchho was aware of the existence of the recitals in the instrument acted upon.

Of the many suspicious things about these documents containing references to adoption, or describing the Respondent as an adopted son, one of the most suspicious is the absence of all reference to the date of the adoption. For all they disclose, it might have occurred at any

time between his birth in 1865 or 1866, and July 1888. As far as appears in this case, the date of that ceremony was first fixed when the plaint in the second suit was filed on the 24th December 1900. The first action (*i.e.*, that in which Kishori Lal was Plaintiff) was instituted on the 22nd September 1899, over fifteen months previously. In this latter case, though Chunni Lal pleaded that he was adopted, he did not name any date for the ceremony. Having regard to all these facts—the contradictions between the principal witnesses examined on the respective sides on almost every important point; the improbabilities of the Respondent's story; its inconsistency with the conduct and action of the principal parties concerned, as well as with the mode in which the business of the firm was conducted and carried on; the suppression of documents; the non-appearance of the Respondent as a witness at the trial to explain, if he could, the many circumstances which called for explanation from him; and, above and beyond all, the non-production of any account of the expenditure at the ceremony of adoption—their Lordships think that the most rational and just conclusion is this, that the Respondent has failed to discharge the burden of proof of the adoption which undoubtedly lay upon him, that is, that his case is not proven.

Their Lordships will therefore humbly advise His Majesty that these Appeals should be allowed, the decrees of the High Court discharged with costs, and the decrees of the Subordinate Judge restored.

The Respondent must pay the costs of the Appeals.
