*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Govind Soondaree Debeya and others, and Juggodumba Debeya and others, from the High Court of Judicature at Fort William, in Bengal; delivered 3rd December, 1870.*

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Present:—

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
LORD JUSTICE MELLISH.

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SIR LAWRENCE PEEL.

THIS is an Appeal from the decision of the High Court of Judicature, at Fort William, in Bengal, affirming a decision of the Local Court. The question was a mere question of fact depending upon evidence, and depending upon the inferences to be drawn from the acts and conduct of the parties.

Their Lordships do not feel themselves called upon to go as minutely into the details of the evidence which has been given on the one side or on the other, as if they had been a Court of First Instance, or to satisfy themselves that if they had been such Court of First Instance, they would have concurred in the Judgment of the Court below as that which the weight of evidence was in favour of. They consider that in accordance with the rule which has been more than once laid down at this Board, upon a mere question of fact, a question of fact which has been decided in the same way by both Courts in India, it is the duty of the Appellant to satisfy them, beyond all reasonable question, that there was some miscarriage in the Court below, in respect of some principle which they acted upon, in respect of some presumption to which too much weight was given, or in respect of something as to which they could see that there was a matter of principle involved which this Board

ought to set right for the guidance of the Courts of India in other cases.

In this case the question was a mere question of fact, and both Courts seem to have gone very minutely into all the questions of evidence. The Court below gave a very long and very elaborate Judgment. The Court at Fort William admits, in favour of the Appellant, that abundance of oral evidence had been produced to prove the fact of the permission to adopt the question in the cause having been first given verbally and then in writing, but they say,—"We entirely discredit the whole of the evi-" dence except that of Dr. Elton, knowing how easy " it is when family disputes arise to raise claims, " such as is made in the present case, and to sup-" port them with any amount of oral evidence, even " that of the nearest relatives of the family who " generally range themselves on one side or the " other, and who cast aside all regard for truth in " order to secure the success of the party whose " cause they have espoused; and our past experi-" ence tells us that such is particularly the case in " suits to uphold or set aside alleged acts of " adoption in Zillah Mymensing," the particular Zillah in question. Now their Lordships do not feel themselves at liberty to say that this was not a true statement of the practice and of a danger to be guarded against. The Court below goes on to say,—"There are, however, reasons beyond this " general one which, in our opinion, render this " testimony utterly worthless," and then they say, —"We find that Womesh Chunder died in 1256, " that from that time till 15th Assin, 1268, a " period of twelve years, nothing was done by " the Plaintiff in furtherance of the permission " to adopt which, as she alleges, she had received " from her husband; no publicity was given to " this instrument, no care was taken to register " nor to keep it in her own custody, and the in-" strument itself is not to be found; but the " Plaintiff comes into Court with a plausible tale, " that she was too young to take care of the paper " when her husband died, and so made it over to " her father-in-law, from whose custody it passed on " his death to that of his son, and thus on his widow " she casts the *onus* of producing it or the odium of " having destroyed it. After the death of her

"father-in-law she allowed her brothers-in-law to "take possession of the estate, made no attempt to "make the adoption, an act which would have "secured to her as guardian of a minor adopted "son a large share of the family property, but she "proceeded with her mother-in-law to Benares "apparently with the purpose of spending the "remainder of her life there, when the unex-"pected death of her youngest brother-in-law "brought her back to the family residence, pre-"pared to contest, with his widow, the right to the "possession of the property, and supporting her "claim by any amount of hard swearing which "unscrupulous parties about her do not hesitate to "put forward in her behalf. So long as any male "member of her husband's family remained alive, "she took no steps to carry out her husband's per-"mission to adopt, but no sooner has the last male "member deceased and the possession of the "property devolved on his widow, than the Plain-"tiff suddenly starts up from her long sleep and "tries to get possession by an alleged dormant per-"mission to adopt." The inference drawn by the Court below from that statement of facts, was that the whole conduct of the lady and the conduct of the family was inconsistent with the oral testimony which was given, and they preferred that inference so drawn from such conduct to the oral testimony. The Court then proceeded to deal with the evidence of Dr. Elton, which they considered to be the only oral evidence that might be entitled to credit. They came to the conclusion that it was mere hearsay testimony, in which opinion this Court also agrees.

Their Lordships are unable to see any sufficient ground whatever upon which they can say that the High Court in Bengal was wrong in preferring the conclusions to be drawn from these acts and the conduct of the parties to the oral testimony, that testimony being of a kind, which in their Lordships' experience is generally liable to be doubly suspicious, there being also an amount of conflicting evidence. There is also this fact which is not mentioned in the Judgment, but which has struck their Lordships, — a document which is proved in evidence, which seems to be an authentic document, by which the father-in-law,

years before his death, registers another deed or power of adoption in the same family, reciting in it that there was no power of adoption given in respect of his eldest son who is deceased, — a fact which apparently he had no reason whatever for inventing if it were not true.

On the whole, their Lordships are of opinion that there are no sufficient grounds for disturbing the conclusion which was arrived at by the High Court, and they will humbly recommend Her Majesty that this Appeal be dismissed with costs.