Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lachman Singh v. *Mussummat Puna and Mussummat Sumitra, from the Court of the Judicial Commissioner, Central Provinces of India; delivered 22nd February* 1889.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The sole question raised in this appeal is a question of fact, whether Kalli Baboo made a gift of his estate to Ramchandra, under whom the Respondents claim. If there was no such deed of gift the title of the Appellant is a good one, but if there was, then the Respondents, being the heirs of Ramchandra, are entitled to the decree which they have got.

The question has been before three Courts, and they have all decided in favour of the gift. They have held that it is proved by a deed of which secondary evidence was given.

The case is not only within the general rule which this Committee observe, that they will not, unless under very exceptional circumstances, disturb a finding of fact in which the Courts below have concurred, but it is within the more stringent rule laid down by the Code of Civil Procedure. The third Court was the Judicial Commissioner, and to him the appeal was what is called in the Code a second appeal. Section 585

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of the Code of 1882 says,—"No second appeal "shall lie except on the grounds mentioned in "Section 584." Those grounds are, "the de- "cision being contrary to some specified law or "usage having the force of law," or "the "decision having failed to determine some "material issue of law or usage having the force "of law," or for substantial defect in procedure. It is not alleged here that there is any defect of procedure. Therefore in order that this appeal may succeed there must be some violation of law.

This Committee is sitting on appeal from the order of the Judicial Commissioner, and it can only do what the Judicial Commissioner himself could have done. No special leave to appeal from the decree of the Commissioner has been applied for, and their Lordships find that they are bound by his findings of the facts. Therefore the only questions here are, first, whether a case arose for admitting secondary evidence, which was a proper question of law; and secondly, whether the evidence that was admitted was really and truly secondary evidence.

With regard to the case for admitting secondary evidence, their Lordships refer to the Evidence Act of 1872. It says,—"Secondary "evidence may be given of the existence, con- "dition, or contents of a document in the "following cases." Two of the cases are,— "When the original is shown, or appears to be "in the possession or power of the person against "whom the document is sought to be proved," and "When the original has been destroyed or "lost, or when the party offering evidence of "its contents cannot, for any other reason not "arising from his own default or neglect, produce "it in reasonable time."

In this case there is evidence of two witnesses, of whom certainly one, and probably both, assisted at

what they call a ceremony, in which Kalli Baboo made over the property to Ramchandra, and told the people present, the villagers, the ryots or cultivators, that Ramchandra was the malik. There is the evidence of one witness that he was present at the signing of a deed, which he says was stated to be a deed of gift from Kalli Baboo to Ramchandra, and there is the evidence of another witness that Kalli Baboo told him that there had been such a deed of gift. Whether that evidence would of itself prove the deed of gift need not now be discussed, but that it formed good ground for holding that there was a deed capable of being proved by secondary evidence, cannot be doubted. The Courts below have found that all the documents belonging to the estate passed into the hands of the Appellant, and therefore that the deed in question is in his power, or has been destroyed or lost.

Then what is the secondary evidence which is let in? It is a copy of a deed which was filed in another suit and is still on the records of the Court. That deed is endorsed "Copy in accordance with the original," and it is signed by the Judge presiding in the Court. Their Lordships accept the opinion of the Judicial Commissioner upon the value of that copy. His words are these:—"There can be no doubt that "the Judge, in the course of the suit in 1864, "did accept and file, with the proceedings, a "copy of a deed of gift by Kalli Baboo, and "the only question is whether that copy had "been compared with the original, when the "copy is enfaced, in accordance with practice, "'Copy according to the original,' and the "Judge's order to file is also found on it. I "cannot doubt that the copy was duly compared. "Except the Judge, there was no person who was "authorized to compare and accept a copy, and

"his signature to the order must, it seems to "me, guarantee the genuineness of the copy." Their Lordships entirely concur with that opinion. When the copy is looked at it establishes the deed of gift on which the Respondents rely.

There was another question raised with respect to some goods and chattels—some moveable property. It was said that the Appellant, having been in possession of the estate rightfully under a deed of gift from Ramchandra's widow, was entitled to the income during that time, and the Judicial Commissioner has to a certain extent given effect to that contention by adjudicating to the Appellant the ownership of some villages which it appears that during that period he purchased out of the surplus or savings from the income. But besides the land he received a certain quantity of chattels which we may call stock and plant, and it is now contended that, as the original stock and plant must have worn out, and the Appellant was not under any obligation to replace it, therefore that which he has in fact brought in to replace it belongs to him and not to the estate. So far as there is stock and plant belonging to the three villages which the Judicial Commissioner has adjudicated to the Appellant, that he takes. But with regard to the other property which forms part of the estate which is adjudicated to the Respondents, their Lordships think that the Appellant is in the position of an ordinary tenant for life who enjoys furniture and plant which wears out from time to time, and which he replaces, and that that which is found attached to the property which the Respondents receive must follow the title to that property, and that the decree of the Judicial Commissioner is right in not giving to the Appellant any more stock or plant than belongs

to the three villages which he has given to him.

The result is that the appeal fails in every respect, and their Lordships, therefore, must humbly recommend Her Majesty to dismiss it. There will be no costs, as the Respondents do not appear.
