

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussumat Jaimungul Koeri and others v. Mussumat Mohkem Koeri and another, from the High Court of Judicature, at Fort William, in Bengal; delivered February 1st, 1882.*

Present:

LORD BLACKBURN.

LORD WATSON.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

IN this case their Lordships are of opinion that there is no question of law involved. The question is one of pure fact, whether the Plaintiff was upon the evidence shown to be the person she asserted herself to be. There has prevailed, for a great many years, a rule of practice that their Lordships do not enter into the question of whether the decisions of the Court below are, or are not, correct on matters of fact, provided the two Courts below have proceeded upon the evidence, and have come to the same conclusion. Here, the allegation of the Plaintiff being a question of fact, and there being no question of law involved, that would be a sufficient ground for dismissing the Appeal and advising Her Majesty to affirm the decision of the Court below, unless it can be shown that the two Courts below did not in substance really and truly proceed upon the same ground. Probably, if the Appellant could do that, the case might be said not to come within the rule. Both the Courts below agree

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that the Plaintiff is not made out to be the right person. The Judge of the First Court proceeds further to say, having shaped the issue in that way, that another claimant was the right one. Of course, if he had said, "Finding that claimant A. was the right one, I find that claimant B. cannot be the right one," that would be a most irresistible conclusion—if he had gone on that ground. But their Lordships think, upon looking at the judgment, that the Judge below has gone into the evidence and shown ample and strong reason for saying that the Plaintiff is not the right claimant, and when he afterwards says that the other one is the right one, he may have drawn an improper conclusion from the reasoning on which he arrived at the conclusion that the Plaintiff was not the right person. The Superior Court proceed on the very same ground of fact, as their Lordships understand it, and say they agree with the Judge below in thinking the present Plaintiff is not the right person, but do not draw the conclusion that the other claimant was the right one. So that the two Courts below have not only come to the same decision, but have come to the same decision substantially on the same grounds. Therefore the case seems to fall within the rule of practice which has been alluded to; and their Lordships think, without further going into the merits, that they ought humbly to advise Her Majesty to dismiss this Appeal with costs.