Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hurri Bhusan Mookerji v. *Upendra Lal Mookerji and others, from the High Court of Judicature at Fort William in Bengal; delivered 20th May* 1896.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

The Plaintiffs in this suit, who are Respondents in the appeal, make claim as reversionary heirs of Chunder Bhusan who died in the year 1832. The Defendants are his widow who became his heir, and Hurri Bhusan Mookerji whom the widow adopted in the year 1887. The substantial object of the suit is to dispute the adoption on the ground that no authority to adopt was given by Chunder Bhusan to his widow. The widow has died pending the appeal which is now prosecuted on behalf of Hurri Bhusan.

Soon after her husband's death, the widow, or her friends, for she was then a girl of 13, asserted the existence of a written power to adopt, and she has at intervals renewed the assertion. But the instrument was never until the present suit produced in Court, though there had been previous hostility and litigation between the widow and the reversionary heirs. No action was taken on it till the year 1884 when the widow adopted a boy. That boy died, and

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the present Appellant was adopted four years afterwards. On these facts and on the oral evidence the Subordinate Judge decided that the instrument relied on was not genuine, and that the widow had no authority to adopt. On appeal the High Court took the same view.

It appears that the Subordinate Judge rejected certain documents produced from the Courts of the Magistrate and the Collector, which the Defendants tendered for the purpose of corroborating their oral evidence. The High Court admitted those documents. There was no dispute as to their construction; the only question was how far they added to the weight of the Defendants' evidence, and the High Court thought they added very little. It is now contended that because the High Court had before it materials which the Subordinate Judge had not, the case ought not to be treated as one in which there are concurrent decisions on facts. It would, however, be a strange thing if concurrent decisions were to have a less conclusive effect where the evidence in the first Appellate Court has been added to entirely in the interest of the Appellant than they would have if his evidence had remained untouched. Their Lordships indeed have heard nothing inducing them to think that they would come to any different conclusion if the facts were all re-examined, but they are quite clear that there is no ground for making the case an exception to the valuable rule against disturbance of concurrent decisions.

The remaining question is whether the suit has been brought in proper time. The material dates are the first adoption in 1884, the second adoption in 1887, and the commencement of the suit in 1888.

The Subordinate Judge carefully discussed the plea of limitation and overruled it. The

Defendants appealed on this point among others, but it can hardly have been pressed, for the learned Judges of the High Court do not notice it in their judgment, and they say that the only question before them is whether the widow had power to adopt.

The Limitation Act of 1877 contains two articles specifically relating to suits for attacking and supporting adoptions respectively. No 118 enacts of a suit to obtain a declaration that an alleged adoption is invalid, that it shall be dismissed if brought after six years from the time when the alleged adoption becomes known to the Plaintiff. This suit therefore, even if it were affected by the adoption of 1884, would not be barred by Article 118.

It is however argued that the principle of the Limitation Act is not to enable suits to be brought within certain periods, but to forbid them being brought after periods each of which starts from some defined event, and that more than one article may apply to the same suit. So a Plaintiff impugning an adoption may find himself impeded by other events, *e.g.*, a legal proceeding protected by a shorter term of prescription. And in this case it has been urged at the bar that there are two other articles, viz., 92 and 93 which compel the dismissal of the suit.

By Article 92 a suit to declare the forgery of an instrument issued or registered must be dismissed if brought after three years from the time when the issue or registration becomes known to the Plaintiff. Assuming in the Defendants' favour that this suit is one to declare forgery, is the instrument one of the kind indicated by the article? It was not registered, but, as argued for the Appellant, it was issued when the adoption of 1884 was effected with full publicity. Their Lordships

think it sufficient to say on this point that in their opinion the word "issued" is intended to refer to the kinds of documents to which people commonly apply that term in business; and that it has no application to an instrument such as a power to adopt.

By Article 93 a suit to declare the forgery of an instrument attempted to be enforced against the Plaintiff must be dismissed if brought after three years from the date of the attempt. It is contended that the adoption of 1884 was such an attempt. It is however, as the Subordinate Judge points out, very difficult to say that an adoption followed by nothing more is in any sense an enforcement of the power against other persons. Their Lordships are clear that it is not so within this Article. If it were Article 118 would have no force in cases where the Plaintiff impugns an adoption on the ground that the power alleged for it is not genuine. They hold that this case is described by Article 118 alone, and therefore the suit is brought in good time.

They will humbly advise Her Majesty to dismiss the appeal and the Appellant must pay the costs incurred in this appeal of the Respondents who have appeared.