Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Luchmi Koer v. *Chowdhry Mohunt Roghu Nath Das, from the High Court of Judicature at Fort William in Bengal; delivered* 19*th June* 1900.

Present at the Hearing:

Lord Davey.

Lord Robertson.

Sir Richard Couch.

Sir Henry De Villiers.

Sir Ford North.

[*Delivered by Lord Robertson.*]

The question raised by this Appeal is whether the Appellant was the wife and is now the widow of Raja Ram Das, who died on 27th November 1878. The suit was initiated by the Appellant on 22nd November 1890 in the Court of the Subordinate Judge of Tirhoot. The plaint and the written statement of the Respondent, who, being heir of the deceased, appeared as Defendant, involved other questions on which issue was joined; but these it is now unnecessary to rehearse. Many witnesses were examined and many exhibits were filed. On 19th September 1892, the Subordinate Judge of Tirhoot found that the Plaintiff was the lawfully married wife of Raja Ram Das and is now his widow, and he pronounced decree for maintenance at the rate of Rs. 750 a month. An appeal having been taken to the High Court of Judicature at Fort William in Bengal, that

Court on 10th September 1895 set aside the Subordinate Judge's decree and dismissed the suit with costs. The present Appeal is brought from that judgment of the High Court.

Raja Ram Das was zemindar of Jaintpore and a person of considerable wealth and position. He called himself Mohunt but he was not in fact a Mohunt. Prior to the disputed period he was unmarried, but he was free to marry; he was greatly addicted to women, and he died, under thirty years of age, of diseases induced by his excesses. At the time of the alleged marriage, which was seven months before his death, he was suffering from those ailments.

Of the personal facts relating to the Appellant, it is difficult to say anything that is quite certain. She and her mother, for a purpose collateral to the present issue, have thought well to represent her as of the tender age of seven or eight at the time of her marriage but it may be assumed that she was in fact older, and had attained puberty. Her father is a most shadowy figure in the evidence, and his identity is not certainly ascertained. Her mother's part in these proceedings is much more prominent. The Respondent suggests that she was an adventuress; and both she and her daughter are, to say the least, not uniformly truthful even in matters dangerously near the essence of their claim and they are persons whose own statements must be received with caution and whose case it is necessary to test with vigilance. At the time of the alleged marriage, Gopi Bai, the mother, was practising medicine; and, contrary to her own statement, she does not seem to have withheld the benefits of her skill from either sex. She was a Bairagi, as was also the Raja, and the Judge of the High Court who has formed the most adverse opinion of the Appellant's case considers that Gopi Bai attended the Raja

professionally and "took advantage of his "dissolute and immoral habits to entangle him "into living with the Plaintiff."

This observation may well introduce what is the central fact in the case, a fact which it is necessary to keep steadily in mind throughout the examination of the evidence, and which narrows the true scope of the controversy. It is common ground between the parties that Raja Ram Das and the Appellant lived together for the last seven months of his life; and the only question is whether this took place on the footing of marriage or of concubinage. Had the fact been otherwise, the inherent improbabilities of the Plaintiff's case arising from the alleged age of the bride and the health of the bridegroom would have been extremely difficult to overcome. But, if these two persons, whatever her age and whatever his health, did in fact cohabit during the period in controversy, objections have no relevancy which strike no more at the theory of marriage than at the theory of concubinage but really at facts common to both. Accordingly, so far as the Appellant's age is concerned, the true inference is not that the story of the marriage must be rejected but only that she was older than she allows and that the credibility of herself and her witnesses is to that extent affected. Again, the surprise and disgust excited by Gopi Bai having given her daughter to a person in the Raja's condition of health arise equally on either theory and have scarcely any influence in the election between the two.

The case of the Appellant then, as presented in evidence, is that she was married to the Raja Ram Das at Benares on a day early in May 1878. The long interval between the alleged marriage and the trial of the issue must be allowed for in considering the evidence of the witnesses

examined. It does not however give rise to any just suspicion that the Appellant's claim is an afterthought; for, immediately after the death of Raja Ram Das, the Appellant judicially asserted herself as his widow and she received maintenance out of his estate from his death down to the dispute which led to the present litigation. These points will be hereafter more fully examined.

The Appellant has submitted to their Lordships' consideration the evidence of eleven witnesses who assert that they were present at the marriage ceremony and two who assert that they were present at the procession immediately preceding but not at the ceremony itself. The marriage rites to which the witnesses depose were appropriate to the fact that both parties were Bairagis. The body of evidence thus presented is so substantial that it is difficult to disregard it, unless analysis shows its quality to render it unreliable. The Respondent has boldly faced this difficulty and asked their Lordships to follow the High Court in entirely rejecting it. It is to be observed however that neither of the learned Judges of the High Court has presented any destructive criticism of that evidence, founded on inherent defects; the conclusion of both is rested on the antecedent improbability of such a marriage and on the subsequent events of the case. Their Lordships have had the benefit of a close and careful examination of the evidence by the Respondent's Counsel and they are unable to find adequate grounds for believing that witnesses who are not only numerous but of various social positions have been suborned, and the respectability of some of them is vouched for by the learned Judges in the High Court. But further, all the witnesses were cross-examined, and the cross-examination has in no instance shaken the evidence, while in several

cases it has brought out circumstantial and striking additions to its verisimilitude. There is no monotony in the evidence, while at the same time there are no contradictions; each witness speaks from his own point of view and some saw more and some less.

On one point indeed the Respondent has succeeded in raising the suspicion that some of the witnesses have spoken rather on the suggestion of the Appellant's mother than from their own knowledge, and that is the Appellant's age. It seems certain that at the time of the marriage the Plaintiff was not so young as 7 or 8 and many of the witnesses give that as her age. But even assuming that those witnesses have too facilely accepted the Appellant's story as to her age, their Lordships do not regard this as an adequate ground for rejecting the whole of their evidence, as tutored. The age of the bride (whose dress precluded any accurate inferences from her face or figure,) was not a matter on which they had personal knowledge or could do otherwise than rely on information, whereas the matter which they came to attest was the *factum proprium* that at Benares on a certain day they saw certain things done.

On the whole, the solid body of direct testimony presented by the Appellant as to the fact of marriage can only be rebutted by the most cogent contrary inferences from the circumstances of the parties. Before ascertaining whether such exist it is well to gather together those proved facts which corroborate the affirmative evidence.

Of these, one is supplied by the Respondent. In cross-examination the Appellant seems to have been challenged by the Respondent to say whether any persons were with the Raja when he was at Benares on the occasion of his marriage, and she named two persons, both of whom were afterwards put into the witness box by the Respondent.

Both these men were very likely to have been with the Raja on the occasion in question, if he himself was there, for they were close attendants and confidants, as their own depositions show. It was manifestly the duty of the Respondent if the Appellant had spoken falsely on this crucial test of her story which he himself had selected, to disprove her statement by these witnesses; yet neither was asked a question on the subject. The Appellant may fairly claim, and the Subordinate Judge has held, that her statement that they were present is to be accepted as true.

The next fact in the order of time is one which has substantial importance and has been treated much too lightly in the High Court. After the death of the Raja, the executor under his will applied for (and ultimately obtained) probate. But on 18th January 1879, within two months of his death, the Appellant filed a caveat in the Probate Court designing herself as widow of the Raja, and she followed this up by a written statement in which her marriage was specifically alleged. It is unnecessary to consider the main contention which she maintained on that occasion, for the Judge held that even assuming everything she said to be true no valid objection was stated to the prayer of the executor for probate. The point is not merely that the Appellant immediately showed herself in the character of widow, but that she thus came forward, not asserting her marriage (as if assertion were needed,) but assuming it, in order to enforce what she alleged to have been a condition of her marriage viz. that her brother should be adopted as son of the Raja.

This tone of the Appellant's pleading, implying that the marriage itself was undisputed, is in harmony with certain admissions by the Respondent, who it is true was only a boy at the time of the Raja's death but who says that five

or six months before that event (that is to say just after the alleged marriage) he had heard the Appellant and her mother say that the Appellant was married to the Raja. The position taken by the Appellant in the probate proceedings throws a strong light also on the subsequent payment to her of maintenance, for there could be no dubiety as to the footing on which she received it. These payments were made regularly until the Respondent got into pecuniary embarrassment and there are extant Tankhas in which the allowance is expressly said to be on account of maintenance. The Respondent has sought to assimilate these payments to payments to certain prostitutes who had been the mistresses of the Raja, on the ground that in a statement of liabilities the allowance of the Appellant appears in juxta position to those doles. But even in this juxta position the Appellant's name is distinguished by the honourable prefix of Mussummat, while the amount of her allowance is in marked contrast to those of the others. Among the minor corroborations of the Appellant's claim she points to the fact that in certain letters to her the Respondent addressed her as Bhouji (brother's wife) and although the amatory tone of the letters precludes the reader from taking everything literally, this is to be noted along with the other facts of the Appellant's case. The circumstances now noticed, derived from the period after the Raja's death, furnish strong corroboration of the direct evidence of the fact of marriage. (Their Lordships do not rely on some words uttered by the Raja himself for they may possibly have been intended merely as an evasion of an unwelcome inquiry.)

Against this evidence the Respondent has mainly relied on the general improbabilities arising from the alleged age of the Appellant and the health

of the Raja, on the inferiority of her position, on the absence of religious motive for the marriage and on a variety of other objections such as the unlikelihood of a personage like the Raja going to Benares for his marriage without a retinue. Several of these matters have been already touched on; and there is this further general observation to be made,—that the disorders of the Raja's life make the ordinary criteria of conduct misleading guides to the truth of what he allowed himself to do or was induced to do. It may very well be that Gopi Bai had established an influence over this invalid and voluptuary to which her medical skill contributed and that the Raja did not court publicity for a marriage upon which reflection might be made.

The Respondent however has advanced a few specific facts which, so far as they go, bear directly against the marriage. The Raja had made his will before the alleged marriage and in it of course there was no provision for the Appellant. When he did make provision for her, it was by furnishing the larger part (if not the whole) of the price of a property, which was conveyed by the seller to the Appellant. Now the purchase and the terms of the conveyance were arranged by two persons, of whom one was a servant of the Raja and the other a servant of Gopi Bai, and the Respondent's point is that the Appellant is not described as the Raja's wife but as if she were unmarried. *Primâ facie* this is an argument against the Appellant; but it is not of a very conclusive character, and the Respondent did not bring home either to the Appellant or Gopi Bai or to the Raja any knowledge of the terms of the conveyance. As regards the testamentary intentions of the Raja towards the Appellant, it may very well have been that he relied, as he

justly might, on the provision of the law to secure this lady maintenance, over and above the property conveyed by this deed of sale.

On a full consideration of the whole case their Lordships deem the marriage to be established.

On the question of the amount of maintenance, their Lordships agree with the High Court, in fixing Rs. 500 a month as the sum which the Appellant ought to receive. They will humbly advise Her Majesty that the judgment of the High Court should be reversed and that of the Subordinate Judge should be restored with this variation that the amount of maintenance be Rs. 500 a month instead of Rs. 750 a month, and that the Respondent pay the costs in the High Court and proportionate costs in the Court of the Subordinate Judge. The Respondent will also pay the costs of this Appeal.