Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Musammat Shafiq-un-nisa v. *Khan Bahadur Raja Shaban Ali Khan, from the Court of the Judicial Commissioner of Oudh; delivered the 8th July* 1904.

Present:

LORD DAVEY.
LORD ROBERTSON.
SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

In this case the Appellant, who was the Plaintiff in the suit, sued the Respondent, who was the Defendant, for recovery of possession of a taluk called Salempur, in Oudh. The Respondent is in possession, and he claims to be entitled to the taluk as the son and next male heir of a former Talukdar, Raja Nawab Ali Khan. The Appellant, however, alleges that the Respondent is not the legitimate son of Nawab Ali, and that she is the elder daughter of the sister (now deceased) of Nawab Ali, and is entitled, according to Mahomedan law, by the Oudh Estates Act, to succeed to the estate. The Respondent denies the alleged relationship of the Appellant to Nawab Ali, and as the Appellant can only succeed on the strength of her own title, the first issue is, whether the Appellant fills the position she alleges. The learned Judges of the Civil Court and of the Court of the Judicial Commissioner have given concurrent judgments against the Appellant on this point. Under these circumstances it is not necessary for their Lordships to review all the evidence at length.

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But the Appellant suggests that the Civil Court and the Court of the Judicial Commissioner have given erroneous findings in matters of law. The only two points, however, to which Counsel for the Appellant directed their Lordships' attention were these. In the first place, he says that both Courts below have treated as inadmissible the evidence of certain witnesses on the ground that their evidence is hearsay only and has not conformed with the requirements of the Indian Evidence Act; and secondly, he says that a certain document, marked P 6, was wrongly rejected in evidence.

As to the first objection, their Lordships are of opinion that no fault can be found with the mode in which the Courts in India have dealt with the evidence in question. On the face of the evidence it is sometimes a little uncertain whether the witnesses purport to be speaking from their own personal knowledge, or from information which they have derived as members of the family or otherwise. But the Courts appear to have considered the evidence of the witnesses from both points of view. They say, either these witnesses are speaking from personal knowledge, or they are speaking from information which they have derived from others, and if they are speaking from information which they have derived from others, they do not state the persons from whom they derived that information, nor—which is equally important—at what period of time they derived it; and, if they are speaking from personal knowledge, the learned Judges point out inaccuracies and contradictions in their evidence which, in their opinion, render the witnesses unworthy of credit.

Their Lordships do not conceive it to be any part of their duty to criticise with any strictness the opinion which has been expressed by the Courts as to the credibility of the witnesses.

That, in their Lordships' opinion, is eminently a question for the Courts in India. But their Lordships see no reason to differ from the estimate which both Courts have formed as to the weight to be attached to the statements made by the witnesses, and so far as the witnesses are speaking from information and not from personal knowledge, their Lordships see no reason to question the manner in which the Courts below have applied the provisions of Section 32 of the Indian Evidence Act.

The other question which has been put before their Lordships as a matter of law is the admissibility of the Exhibit P 6. That document, if proved to be a genuine statement of Nawab Ali, would go a long way towards establishing the Appellant's case. But both the Courts in India have rejected it. It is a document purporting to be dated on a Mahomedan date corresponding to the 25th April 1865. It purports to be a letter written by Nawab Ali in his own hand, and signed by himself, addressed to the Peshkar or keeper of the public records of the Collector. It is produced out of the custody of the Deputy Collector. Under these circumstances, the document being more than 30 years old, the provisions of Section 90 of the Indian Evidence Act are applicable, and the Court may presume the genuineness of it without proof. Section 90 says:—"The Court may presume that the "signature and every other part of such docu- "ment which purports to be in the handwriting "of any particular person is in that person's "handwriting." What is meant by "the Court may presume" a document to be genuine, is shown by Section 4 of the Act, which is in these terms:—"Whenever it is provided by this Act "that the Court may presume a fact, it may "either regard such fact as proved, unless and

" until it is disproved, or may call for proof of " it." The learned Judge in the Civil Court called for proof of the document, but no proof was forthcoming. It is one of the remarkable things in this case that the Plaintiff did not give any evidence of her own, and no witness was called on her part who was acquainted with Nawab Ali's handwriting to say whether the document was in his handwriting or not. Therefore it may be taken, that unless it can be admitted to evidence under Section 90 of the Evidence Act, there is no proof of the genuineness of the document. On the other hand there are circumstances, both internal and external, which throw great doubts upon the genuineness of the document. It is said that the Plaintiff was Nawab Ali's adopted daughter, brought up by him, and that she was in receipt of proper maintenance and support out of the income of his estate. There is no evidence of those facts, and if evidence could have been given of those facts, one would have thought that the Appellant would have given such evidence, as it might have a material bearing upon her case.

Under these circumstances, their Lordships are not surprised that the Judges, both in the Civil Court and in the Court of the Judicial Commissioner, exercised the discretion which is vested in them by Section 90, by not admitting the document to evidence without formal proof, although it is more than 30 years old, and purports to come from the proper custody. It should be added that the Court considered that there was evidence in the case—which it is not necessary to go into, and to which, in fact, their Lordships' attention has not been pointedly drawn—which raised great suspicions as to the document itself. Their Lordships would always be extremely slow to overrule the discretion exercised by a learned Judge under Section 90

of the Act, and certainly this is not a case in which they would be disposed to do so.

If these questions are disposed of there is really no question of law left as regards this part of the case, and their Lordships therefore can do nothing else but adopt the concurrent findings of both Courts below, and hold that the Appellant has failed to prove her title.

It is not necessary, of course, and their Lordships are not asked to do so, to give any decision on the second issue of the case, whether the Defendant is, or is not, the legitimate son of Nawab Ali. This being an ejectment action, the Plaintiff must succeed on the strength of her own title, and as she has failed to prove her title the suit was properly dismissed.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed, and the Appellant will pay the costs of it.