

the finding of the Judicial Commissioner, unless they were clearly satisfied that he was wrong. 1871

Their Lordships will therefore recommend that this appeal be dismissed with costs.

Appeal dismissed.

Agent for appellant Mr. *Oehme.*

Agents for respondents: Messrs. *J. H. & H. R. Henderson.*

IFTIKARU-
NISSA.
BEGUM.
v.
NAWARAMJAD
ALI KHAN.

MAHARAJ KUMAR BABOO GANESWAR SING
(PLAINTIFF) v. DURGA DUTT AND OTHERS (DEFENDANTS.)

P. C.*
1871
Jan'y 20.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT
FORT WILLIAM IN BENGAL.

Practice—Concurrent Findings on Fact.

Where there are concurrent decisions on a question of fact, the Judicial Committee will not (especially in a question of fact as to boundaries) reverse the decision unless there was no evidence, or there has been in the conduct of the trial, or in the mode in which evidence was adduced, or in the course of deciding the case, a clear departure from the ordinary principles which regulate judicial proceedings.

THIS was an appeal from a decision of the High Court, dated 11th November 1862, affirming a decision of the Principal Sudder Ameen of Tirhoot, dated 31st December 1861.

The question in dispute was what property formed the boundary line between the appellant's and respondents' estates of Pudri and Murthua. The action was brought by the appellant for a declaration of right and a decree for possession of land which the defendants contended was south of his boundary line.

The question was one simply of fact, save as to a point raised whether the plaintiff ought not to have sued within three years to set aside an order of the Survey Superintendent, and arguments were adduced before the Judicial Committee as to that order not being one within Act XIII, of 1848, but on this point it was unnecessary to give any decision.

Present:—THE RIGHT HON'BLE LORD CAIRNS, SIR JAMES W. COLVILLE, SIR JOSEPH NADILL, AND SIR LAWRENCE PEELE.

1871
 MAHARAJ
 KUMAR BABOO
 GANESWAR
 SING
 v.
 DURGA DUTT

Sir *K. Palmer*, Q. C., and Mr. *Leith* for the appellant.

Mr. *Doyne* for the respondents.

Their LORDSHIPS delivered the following judgment :

If it could be shown us in this case that there was a clear miscarriage of justice, that is to say, that there was no evidence whatever which would have warranted the conclusion at which the Court below has arrived, or that in the conduct of the trial, in the mode in which the evidence was adduced, in the course that was pursued as to holding the balance of justice between the parties in the course of the trial, there was a clear departure from the ordinary principles which regulate judicial proceedings, then their Lordships, notwithstanding the decision of the two Courts below, would have entertained and considered the appeal. But their Lordships are clearly of opinion that when the question is one simply of fact, and when above all things, that question of fact is a question of fact as to boundaries, where the local knowledge of local Judges and the observation of the local witnesses are all important, they would be departing from what has been the practice of this tribunal if they were to act in opposition to the well-considered judgment of the two Courts from whom the appeal comes. It is admitted, and could not be otherwise than admitted, that there is evidence which, if believed, would have justified those judgments. Their Lordships are of opinion that the Courts below were the best tribunal for deciding the question whether the evidence was credible or not, and they would be entirely unwilling to disturb their judgments.

Their Lordships, therefore, will humbly advise Her Majesty that this appeal should be dismissed with costs. In the view which has been expressed of the case, it is unnecessary to consider or to express any opinion upon the point as to the statute of limitations.

Appeal dismissed.

Agent for appellant: Mr. *Wilson*.

Agent for respondents: Mr. *Barrow*.