Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Tirlok Nath Shukul and others v. *Musammat Lachhmin Kunwari and another, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the* 30*th April* 1903.

Present at the Hearing:

LORD DAVEY.
LORD ROBERTSON.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

The only question in this case is, whether Kashi Prasad, the second Respondent, is the legitimate son of the first Respondent, Musammat Lachhmin Kunwari, by her deceased husband, Bish Nath Prasad Shukul.

The rule of law on the subject is contained in Section 112 of the Indian Evidence Act, 1872, which provides that "the fact that any person "was born during the continuance of a valid "marriage between his mother and any man, or "within two hundred and eighty days after its "dissolution, the mother remaining unmarried, "shall be conclusive proof that he is the legiti-"mate son of that man, unless it can be shown "that the parties had no access to each other at "any time when he could have been begotten."

Bish Nath died of small-pox after a few days' illness on the 16th May 1895, and Kashi Prasad was born on the 4th January 1896, 223 days later. The burden of proof was therefore on the

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Appellants who, as reversionary heirs of Bish Nath according to Hindu law, filed their suit on the 25th February 1896, for a declaration that Kashi Prasad was not the son of Bish Nath. They asserted that the widow had never been pregnant by her husband, and suggested that the boy put forward as his son was really the son of one Ramavatar Tiwari.

At the hearing they offered no evidence in support of this suggestion, but called witnesses to prove that Lachhmin had been absent at Benares on a visit to her parents for some time before the beginning of her husband's illness, and that she returned to her house only three or four days before his death, at which time "he was senseless." Two of the witnesses said that she had gone to Benares "five or six months before," and a third that she went there "in the month of Magh;" the others did not attempt to fix any date. There was a good deal of evidence upon less material points, and the Subordinate Judge, who seems to have thought that the burden of proof lay on the widow, decided in favour of the Plaintiffs, the present Appellants.

The High Court at Allahabad took a different view. The learned Judges who heard the Appeal came to the conclusion that "the evi-"dence adduced by the Plaintiffs was so feeble "that there was really no case for the Defendants "to meet;" and relying "upon the natural presumption" they found in favour of the legitimacy of Kashi Prasad.

In this conclusion their Lordships concur. The evidence of the widow is clear as to the possibility of access within the necessary period, and no imputation is made against her character. Her statement as to her pregnancy before her husband's death is supported by the sister, uncle, and other relatives of her husband, as well as by members of her own family; and the actual

birth of the child to her is proved by witnesses who were present, and whose testimony was not shaken by cross-examination.

Their Lordships will humbly advise His Majesty that this Appeal ought to be dismissed. The Appellants must pay the costs of the Appeal.