

Bai Monghibai and others: - - - - - *Appellants*

v.

Pragji Dayal Hariani - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 22ND MAY, 1925.

Present at the Hearing :

LORD SUMNER.

SIR JOHN EDGE.

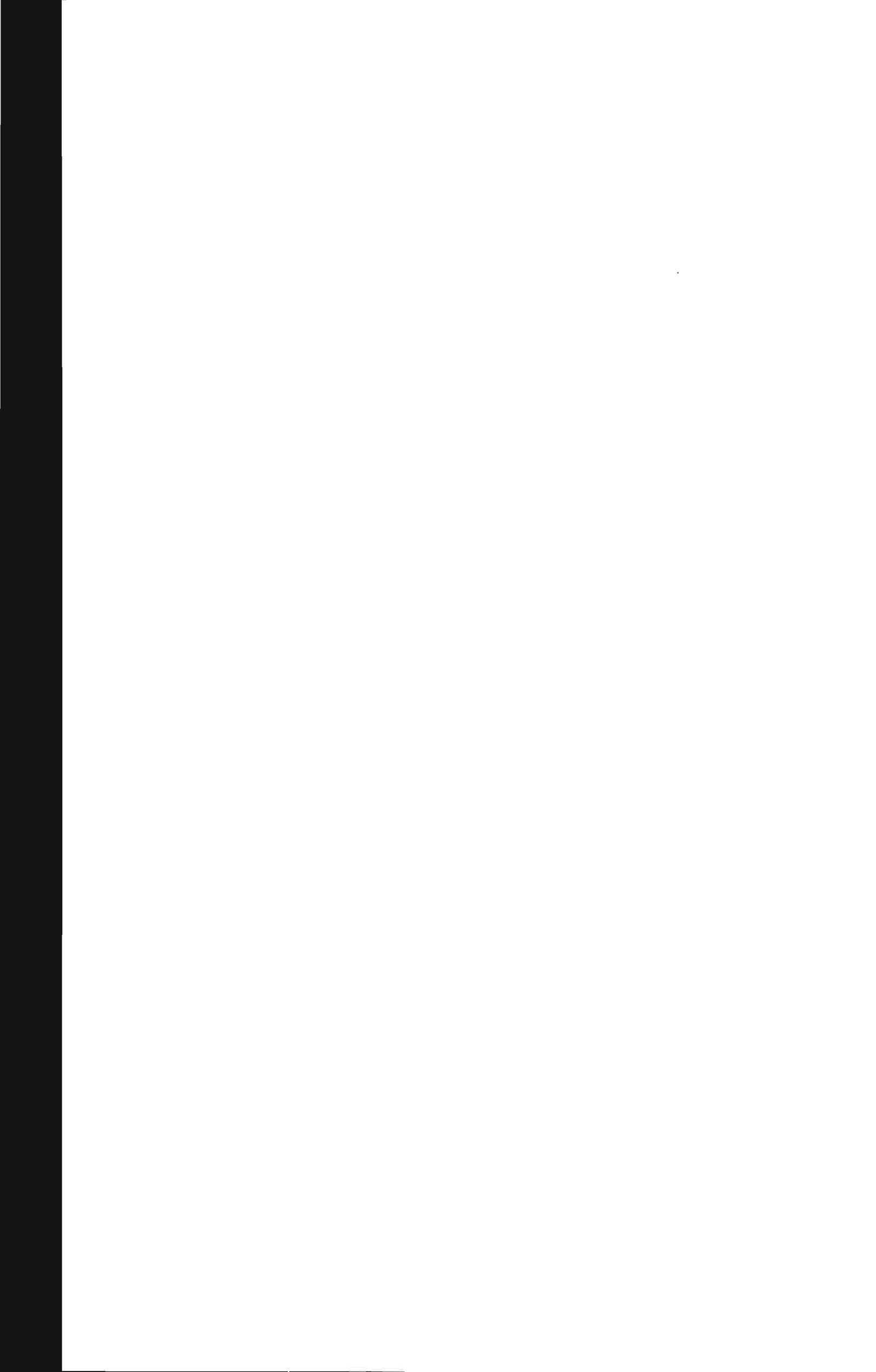
MR. AMEER ALI.

LORD SALVESEN.

[*Delivered by* LORD SUMNER.]

It is unnecessary to go into the circumstances of this matter at any length. A will was propounded. The trial Judge, so far as their Lordships can see after a very careful examination of his judgment, approaching the question with a mind fully open to the suspicious circumstances attending the execution and fully open also to the principles of law in accordance with which it was his duty to try the question, came to the conclusion that the testator was of sound disposing mind when he executed the will, and that it truly was his will. This was his finding of fact and he passed a decree accordingly. On appeal that decree was affirmed. The learned Judges in the High Court reviewed the facts with minds even more alive than the trial Judge's mind had been to the suspicious circumstances, and, in spite of what has been said without, in their Lordships' opinion, ignoring any rule of law or misdirecting themselves in any way, and especially so in attaching importance to the fact that the trial Judge had accepted as true the evidence given before him by a solicitor, whose report of the

transaction, if it was believed, was sufficient by itself to sustain the grant that had been made. It was argued that there was some error in law involved or some substantial question of law raised in this appeal, but, after every possible attempt had been made in that direction, it became quite clear that there was no issue except an issue of fact. Even the learned Judges of the High Court, who granted their certificate that the case was a fit one for appeal under Section 109 (c) of the Civil Procedure Code, said, in terms that make this certificate somewhat unusual in their Lordships' experience, that they could not see what the question of law was. Their Lordships for their part can find none. They consider that the case was entirely one of evidence, and of the conclusion to be drawn from evidence, and the two Courts concur in their finding. There is nothing apparent upon an examination of the nature of this case to bring it within the limited and rare class of exceptional cases, which have occasionally induced the Board to review even concurrent findings of fact. The real complaint against the transaction is not that the execution of the will was in any way extraordinary, but that the character of the will was such as seemed to both the Courts below to have been somewhat of an injustice on the part of the testator towards his wife and children. With this their Lordships have nothing to do. The only result in their opinion which can follow in a case of this kind is that the appeal must fail, with the usual consequences as regards costs, and their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

BAI MONGHIBAI AND OTHERS

o.

PRAGJI DAYAL HARIANI.

DELIVERED BY LORD SUMNER.

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