PRIVY COUNCIL.

CHANDRASANGJI HIMATSANGJI (DEFENDANT No. 2) *v.* MOHANSANGJI HAMIRSANGJI (PLAINTIFF).

P. C.* 1900. *May* 3, 4, 8. *June* 22.

[On Appeal from the High Court of Judicature at Bombay.]

Evidence—Consideration and weight of evidence—Alleged substitution of one boy for another in infancy—One-sided enquiries made to support allegation—Evidence not judicially taken and without notice to interested parties.

The question in issue was whether the appellant, defendant in the suit, was entitled to the name he bore and to the property in dispute of which he had long been in possession, or whether, as maintained by the respondent, the plaintiff in the suit, the real heir to the property died in infancy, and the appellant when a boy, was fraudulently substituted for him. The first Court found in favour of the appellant, but the High Court reversed that decision mainly on evidence taken on enquiries made under official orders, the effect of which was to place the services of the officials employed at the disposal of the pleader for the respondent in order to enable him to obtain material in support of his case.

Held by the Judicial Committee that even if admissible the evidence so taken was of little, if any, value. It was taken to support a foregone conclusion: the enquiries were secret: no notice was given to anybody on behalf of the boy: nobody was present throughout the enquiries to represent the boy or protect his interests: there was nobody to check the mode in which the alleged statements were elicited, whether by leading questions or otherwise: nobody to test the statements by cross-examination: nobody to watch the accuracy with which they were recorded. Considering the purpose, the nature and the circumstances of the enquiries, which, if they were official in any sense, were certainly not judicial, no weight could be given to the proceedings at, or the results of, those enquiries. The judgment of the High Court was therefore reversed.

APPEAL from a judgment and decree (March 7th, 1899) of the High Court at Bombay which reversed a decree (November 10th, 1897) of the Assistant Judge of Broach and decreed the suit of the respondent.

The suit was brought for a declaration that the present appellant, defendant No. 2, was not the son and heir of one Himatsangji Prathisangji, the late Thákore of Mátar, and that

* *Present*—Lord Macnaghten, Sir Andrew Scoble, Sir Arthur Wilson and Sir Alfred Wills.

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the respondent, the plaintiff, was accordingly entitled to all the moveable and immoveable property of the Mátar Estate; and for the recovery of possession, with mesne profits from the date of suit till delivery of possession, of all the moveable and immoveable property attached to the Mátar Estate and situate in the district of Broach.

The main question involved in this appeal was whether one Chandrasangji, who was admittedly the legitimate son of Himatsangji, the Thákore of Mátar, and Bai Jitba, his wife, born at Jadsal in the Native State of Rajpipla on 31st October 1881, died at Majrol in the Gáikwár of Baroda's territories on 14th May 1883; and whether the present appellant Chandrasangji Himatsangji was really one Jiku, a son of Bai Jitba's brother Parbhat Bapu, and was substituted by Bai Jitba for her dead son, if he did die as alleged.

The principal defendants were (1) Bai Jitba, (2) Chandrasangji Himatsangji, the present appellant, (5) The Collector of Broach as Manager of the Mátar Estate. Defendants 3 and 4 were persons who it was asserted aided in the alleged conspiracy to substitute the appellant for the real heir.

The four defendants who appeared all united in asserting that the defendant No. 2, now appellant, was really Chandrasangji, the son of Himatsangji and Bai Jitba, and the genuine heir to the Mátar Estate.

The Assistant Judge of Broach held that the plaintiff had failed to prove the case he set up and he consequently dismissed the suit.

On appeal the High Court (Candy and Fulton, JJ.) reversed the decree of the first Court and decreed the suit with mesne profits from the date of the decree but without costs.

The facts are sufficiently stated in the judgment of their Lordships. The evidence taken on the enquiries there referred to made by Parbhuram, the Thanedar of Pandu, at Chhaliar, and by the Mámlatdár of Amod in June 1884 was objected to before the High Court as being inadmissible, but that Court admitted it, and relied on it, as the main evidence in support of the plaintiff's case.

As to these enquiries Mr. Justice Candy said—

"Now, the most important evidence in the case is that which relates to the enquiry by the Thanedar, Mr. Parbhuram, at Chhaliar in June 1884. The Assistant Judge admits that this enquiry was made by the Thanedar in his official capacity; and the whole record of the enquiry is, in my opinion, admissible under section 35 of the Evidence Act. The weight to be attached to any particular part of the record may vary, and in some instances may be almost *nil*, *e. g.*, if the Thanedar attached to his record and incorporated in his report the statement of a certain person who, though alive and capable of being called, is not now called as a witness, and therefore has not been cross-examined, though the statement may be admitted as part of the official record as a whole, the probative value of that part of the record may be so little that it can safely be disregarded.

"But that the Thanedar was making an official enquiry regarding a fact which was then and is now in issue, cannot be disputed, and is clearly stated by the Assistant Judge. * * * *

"I pass on to the proceedings of the Mámlatdár Chhaganlal at Mátar on 12th and 13th June 1884. Here, too, it is to be regretted that Mr. Courtenay in his instructions to the Mámlatdár told him to make the enquiries *Mr. Kurnaram may suggest.* But there is no suggestion that Chhaganlal was in any way biassed or acted hostilely to Jitba. In our opinion the copy of his Report of 13th June 1884 (531) is evidence, the absence of the original being accounted for. * * * * *

"If comparison with the proceedings of the official enquiries in June 1884 the rest of the evidence is of minor importance. * *

"The question is whether the Majrol story is proved. It stood the test of the cross-examination of the witnesses in the witness-box (Assistant Judge, section 76), but after this lapse of time much more than that is necessary before the Court can eject the 2nd defendant from the estate. The story must be supported by overwhelming circumstantial evidence. That such exists is shown by the fact that in June 1884 two officials—one the Thanedar of Pandu Mewás at Chhaliar in the Rewa Kántha, the other the Mámlatdár of Amod at Mátar in the Broach District—made personal enquiries and inspected and measured the child, who it is admitted is now the 2nd defendant, and the result is that the child was then not a prattling infant of 2 years and 7 months, but a child at least 4 years old and measuring about 3½ feet. It is not the fault of those who represented the plaintiff in 1884 that further investigations were not then made and that the boy was never produced before any European official till August 1887. The 2nd defendant's present appearance and measurement tally more with his being 21 or 22 than 17th; the medical evidence is also in favour of that view. Jitba's conduct is more consistent with the child, which she put forward as Chandrasang, being spurious than genuine.

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"On the other hand what have we?

"(1) The fact that the accusation of the fraud in May 1883 was not made till May 1884. That fact has already been explained.

"(2) The fact that there was much delay in abortive criminal proceedings. For the delay and abortive result plaintiff's representatives were not responsible. That cases like this are frequently commenced in the criminal Courts is well known, but it does not follow that the cases may not be true.

"(3) The fact that there was great delay in the first civil suit, and that when it was dismissed in March 1888, plaintiff's father Hamirsang did nothing till his death in February 1894. This, no doubt, is a fact deserving serious consideration. For the delay in the course of the first suit plaintiff's predecessor is not shown to have been responsible, but for the delay after March 1888 Hamirsang is directly responsible. The only explanation is that he was willing to let his son's brother-in-law remain on the *gadi* provided adequate compensation was given to him (Hamirsang). That is not an unnatural idea. Hamirsang is said to have been in debt. It required a plentiful supply of funds to pay the Court-fees on the claim valued at nearly 2½ lakhs of rupees. The Court can therefore hardly draw the inference that the claim must be a false one, because Hamirsang took no steps to urge it from March 1888 till about August 1893, when according to a *yadi* from one of the Bais he had begun to agitate again. Then he died in February 1894, and his rights descended to Mohansang, his grandson, the present plaintiff. The position taken up by Mohansang is clearly indicated by his statement dated 30th July 1894 (Exhibit 333, p. 254). He was willing to compromise, 'being closely related to the Thakore Saheb.' But admittedly the attempts at compromise fell through and this suit was filed in December 1894.

"After the most anxious consideration the only conclusion I can arrive at is that we cannot avoid the fact that the 2nd defendant was *not* from 2½ to 2¾ years old when enquiry was made in 1884, but was some years older. If so, then he cannot be the genuine Chandrasang. It is true that Mr. Gibb said in October 1884 that 'the difference of age is a mere matter of opinion.' So it is, but as the Assistant Judge showed it is a matter of opinion which in 1884 would have been incontrovertible. The District Magistrate naturally hesitated to insist on criminal proceedings going on, when the dispute from the very nature of the cases was in the first instance one for a civil Court, and hence arose the civil proceedings commenced in 1885 and concluded in the Assistant Judge's Court in 1896. The delay is most unfortunate, but it cannot prevent the Court from giving effect to the conclusions arrived at from a consideration of the evidence.

"I would therefore reverse the decree of the Assistant Judge and award possession to plaintiff of the moveable and immoveable property comprising the Mátar Estate."

Mr. Justice Fulton observed—

"On the whole though the conclusion is one that I have come to with great hesitation it seems to me to be proved that the 2nd defendant is not the original Chandrasang. I can see no reason for distrusting Parbhuram's report corroborated as it is by Chhaganlal's enquiry and by the Doctors' inspections in 1895, which showed clearly that the boy did look considerably older than might have been expected if he had been born on the 31st October 1881. The persistent efforts to have the boy brought forward for inspection show that the reports were honest reports and they seem to be strongly corroborated by the opinions subsequently formed by the Doctors. Having regard to the smallness of stature of the 2nd defendant, I think that it is possible that the difference of age at the time of Mr. Steward's inspection and at the time of the boy's admission to the Wadhwan school was not so noticeable as to attract special attention. The difference in appearance between a well grown boy of 6 and a small sized boy of 10 might not be so obvious as to appear conclusive. As to the entry of the age at the Mâtar school it is not likely that any objection would be taken to the Thakrani's statement of age. It seems to me that in 1884 the Thakranis and their advisers—who must have known clearly what they were charged with, *viz.*, the evidence of Laxmiram Pleader (Exhibit 463) and the petition to the Collector of 30th November 1884 (Exhibit 253)—would certainly have taken steps to disprove such a formidable attack if they had been in a position to do so. The excuse that the mother's fears for the boy's safety *alone prevented* his production cannot be accepted. The pleaders must have been fully aware of the very serious nature of the case, if true, and how easily it could be disproved if false and if they did not insist on the absolute necessity of the immediate production of the boy, the only conclusion seems to be that his production would not have disproved the allegations made in Parbhuram's report."

On this appeal which was heard *ex-parte*.

J. M. Parikh and *M. J. Doherty* for the appellant contended that there was no reliable evidence to prove the facts asserted by the respondent in his plaint. The evidence chiefly relied on by the High Court in reversing the decision of the first Court was that which had been adduced in the course of the enquiries made at the instance of Kurnaram by Parbhuram and Chhaganlal respectively; this evidence, it was submitted, was not admissible in evidence, and had been wrongly admitted by the High Court. Reference was made to section 35 of the Evidence Act (I of 1872) and to *Leelanund Singh* v. *Lakhputtee Thakoorain*[1]; *Samar*

(1) (1874) 22 W. R. 231.

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Dasadh v. *Juggul Kishore Singh*[1]; *Satis Chunder Mukhopadhya* v. *Mohendro Lal Pathuk*[2]; *Ponnammal* v. *Sundaram Pillai*[3]; *Muttu Ramalinga Setupati* v. *Perianayagum Pillai*[4]; and *Lekraj Kuar* v. *Mahpal Singh*[5].

1906: June, 22nd.—Their Lordships' judgment was delivered by

Sir ARTHUR WILSON:—This is an appeal from a judgment and decree of the High Court of Bombay, dated the 7th March 1899, which reversed a decree of the Assistant Judge of Broach of the 10th November 1897. The question raised is one of fact, whether the appellant Chandrasang, the principal defendant in the suit, is entitled to the name he bears, and to the estates which prior to the suit he had long enjoyed, as the son and heir of Himatsang, or whether, as maintained by the plaintiff in the suit, now the respondent, the real Chandrasang died in infancy and the appellant was fraudulently substituted in his place. The First Court held the appellant to be the genuine Chandrasang, the High Court thought otherwise.

Himatsang, who died on the 20th January 1882, was the Thakor of Mátar, and as such was possessed of estates in the district of Broach and in Baroda territory, which by custom descended to a single male heir in accordance with the rule of primogeniture. He left surviving him four widows, of whom the first three were childless, while the fourth, Jitba, had an infant son, Chandrasang, born on the 31st October 1881, a few months before his father's death. And there is no question that this son was his father's lawful heir. Himatsang also left surviving him collateral agnates in two lines. The elder line was represented by Parbhatsang, who would have been the nearest heir of Himatsang if the infant had been out of the way. He died in July 1883, and his rights, if any, passed to his grandson Chhatrasang, who in turn died in 1885, and with him the elder line of collaterals became extinct, and its rights, if any, passed to the second line. The second collateral line was represented at first

(1) (1895) 23 Cal. 366 (368).
(2) (1890) 17 Cal. 849.
(3) (1900) 23 Mad. 499 (503).
(4) (1874) L. R. 1 I. A. 209.
(5) (1879) L. R. 7 I. A. 63: 5 Cal. 744.

by Hamirsang, and after his death in 1894 by his son Mohansang, the plaintiff in this suit and respondent in the present appeal.

Upon the death of Himatsang the title of his infant son Chandrasang was at first not disputed; the conflict was as to the administration of his estate. But as soon as that controversy was settled, Parbhatsang claimed the estates as his own, on the allegation that Himatsang had really died childless, and that Chandrasang was a child, of other parentage, fraudulently put forward as the child of Jitba and as the heir of her husband.

From that time, that is to say from March 1882 down to June 1884, this story was the only basis of the claims put forward. It is now clear, indeed it is the case of both sides, that that story was untrue. Its only present importance is in its bearing upon the good faith or bad faith, the probability or improbability, and thus upon the truth or falsehood of another case, based upon events said to have happened at a later period. It is therefore unnecessary to examine the earlier proceedings in detail, but three points may be usefully noted. First, the early claim was by the elder collateral branch; the four widows supported the rights of the infant, and the then representative of the junior collateral branch sided with them. Secondly, the Collector of Broach was in possession of the estates as guardian of the property of the infant duly appointed by an order of Court. Thirdly, though in July 1882 criminal proceedings were instituted before the Political Agent Rewa Kántha, they were withdrawn; and no suit was ever brought to enforce the claim on the ground now referred to adversely to the infant. That state of things continued down to May 1884, two years and a quarter after the death of Himatsang.

The second ground of claim to the property, which is the ground now in question, arises out of events alleged to have occurred on, and immediately after, the 14th May 1883, on which day, it has been alleged, on behalf of the successive claimants, that the boy Chandrasang died, and that another boy, by name Jiku, a son of Jitba's brother, and a boy considerably older than Chandrasang, was fraudulently substituted in place of the deceased. This story was not told in place of the former complaint that Chandrasang himself was a spurious child, for that story

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was still maintained for some time by the successive claimants, though it is now abandoned. The story of the alleged death and substitution on the 14th May 1883 was in addition to this story.

In 1884 Parbhatsang, the original head of the senior collateral line, was dead, and his grandson Chhatrasang had succeeded to his place. In the middle of May 1884 he entered into an arrangement with one Kurnaram, a pleader of the District Court of Broach, in pursuance of which the latter at once took active steps to further the interests of his employer.

On the 30th May 1884 Kurnaram made an application for assistance to the Collector of Broach. He asserted the death of Chandrasang, and alleged the intention to substitute another boy in his place. In accordance with that application the Collector took steps which led to certain investigations and enquiries, the result of which has had an important bearing upon the decision of the case by the High Court. But as these matters will have to be considered in some detail at a later stage it is unnecessary to examine them at this point.

On the 8th September 1884 Chhatrasang made a complaint to the First Class Magistrate at Broach against Jitba on a charge of cheating by personation, the charge being based upon the alleged death of Chandrasang and substitution of Jiku. The Magistrate took depositions on oath and considered the matter once and again. His conclusion was that the story was untrue, and that there was no reasonable ground for a criminal prosecution, and accordingly on the 10th June 1885 he finally dismissed the complaint under section 203 of the Criminal Procedure Code. That order was confirmed by the District Magistrate, and the High Court on the 25th November 1885 refused to interfere by way of revision.

While the criminal proceedings just mentioned were pending, on the 16th April 1885, Chhatrasang brought a civil suit against Chandrasang and others, in which he alleged the death of the real Chandrasang and the substitution of Jiku into his place and name, and asked for declarations of the spuriousness of the so-called Chandrasang, and of the validity of his own title as heir.

Various delays occurred. Chhatrasang died leaving no male issue, and his rights, if any, passed to Hamirsang, the head of the junior collateral line, and the latter was substituted as plaintiff. The Collector of Broach had to be added as a party, and the plaint had to be returned in order that it might be presented in another Court. That suit was never tried on the merits. It came on before the Assistant Judge of Broach on the 26th March 1888 for the disposal of certain issues of law, and was dismissed for want of a proper stamp. The Assistant Judge said: "As the plaintiff still persists in declaring that his suit is one for a mere declaration, and that it is properly stamped with a stamp of Rs. 10, the only course open to me is to dismiss the suit with costs." Against this decision there seems to have been no appeal.

From August 1893 till near the end of 1894 negotiations were in progress for a compromise between the parties interested, but nothing came of them. It may be noted however that during the progress of those negotiations the appellant was married, and the principal ceremony on the occasion was performed by Hamirsang, whose son the respondent is, and through whom he claims.

On the 12th December 1894 the present suit was instituted by the respondent against Jitba, the alleged mother, and the appellant her reputed son, and others, including the Collector of Broach as administrator of the Mátar Estates. Its material allegations were that Jitba gave birth to Chandrasang on the 31st October 1881, that Chandrasang died in his infancy in June 1883, in the village of Majrol, in Baroda territory, and that Jitba, with the aid of others, concealed the death of Chandrasang, and in his place kept with her her brother's son, whose real name was Jiku, giving him the false name of Chandrasang. The plaintiff asked for a declaration that the appellant was not the son and heir of Himatsang, and a declaration that the plaintiff, now respondent, was entitled to the properties in Broach, and that the Collector should deliver him possession. The allegations just quoted were denied, and thus was raised the sole issue now of any importance.

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At the trial before the Assistant Judge the story told was, that, on the 14th May 1883, Chandrasang was removed by his mother, accompanied or followed by certain persons named, in a cart from Mátar to Majrol in Baroda. (That mother and child left Mátar is admitted, but it is said for Chhaliar.) It is asserted that on the road the child became dangerously ill, that he died at Majrol the same evening, that his body was at once sent for burial, and that the now appellant, said to be Jiku, was sent for and arrived on the 16th, and from thenceforth was held out as the genuine Chandrasang. The genuine child was at that time aged 2½; Jiku, it was said, was at the same time some six or seven years old.

The direct evidence in support of the case so stated was that of three witnesses, as to each of whom the Judge at trial recorded that his evidence was unsatisfactory and untrustworthy, and he totally disbelieved them. He also disbelieved the subsidiary story of an alleged attempt made almost at the same time to obtain another child, presumably less unsuitable in age.

The Assistant Judge dismissed the suit with costs. The High Court, upon appeal, reversed that decision and gave a decree in favour of the plaintiff, the now respondent, but without costs, and against that decision the present appeal has been brought.

The story told is in itself one difficult to accept. The attempt to substitute a boy of Jiku's age for a child of 2½ years would be an extraordinarily daring one, the more so, because no attempt appears to have been made to keep the boy in seclusion, or screen him from general observation.

The fact that the Judge, who heard and saw the witnesses, and whose very full judgment shows the great care and attention which he devoted to the case, disbelieved the witnesses, is entitled to the utmost weight.

Again, it is impossible to approach the story now told without a certain suspicion, arising from the attack so long maintained upon the real parentage of the Chandrasang now admitted to be the genuine child of Himatsang. And this suspicion is necessarily increased by the inconsistent and shifty conduct of the now respondent and his immediate predecessor in title.

The extraordinary length of time which was allowed to elapse after the 14th May 1883, the date upon which everything turns, and the 12th December 1894, when the present suit was filed, is also a circumstance very adverse to the respondent. During all that interval, with the exception of a part of 1893 and 1894, when negotiations for a compromise were in progress, there was never a time at which proper steps might not, and ought not, to have been taken to secure a full trial of the question in issue; and that question is one which from its nature specially required to be disposed of while the facts were fresh. When a suit was brought in 1885 it was never pressed to a trial, but allowed to terminate for want of proper stamp duty. The whole course of proceedings from 1883 to 1894 seems to their Lordships difficult to reconcile with a reasonable desire, on the part of the claimants, to have the question of fact investigated before the proper tribunal, and with proper promptitude.

In his judgment upon the appeal to the High Court, Candy, J., said: "The question is whether the Majrol story is proved. It stood the test of the cross-examination of the witnesses in the witness-box, but after this lapse of time much more than that is necessary before the Court can eject the second defendant from the estate. The story must be supported by overwhelming circumstantial evidence." That support, the learned Judges thought, was supplied by the result of the enquiries made in June 1884 by two officials, the Thanedar of Pandu in Rewa Kántha, and the Mámlatdár of Amod in Broach. Those enquiries have been briefly referred to in an earlier part of this judgment, but inasmuch as they formed the substantial ground upon which the High Court overruled the judgment of the first Court, they call for further consideration.

On the 30th May 1884, Kurnaram, the pleader acting on behalf of Chhatrasang, applied to the District Magistrate of Broach for assistance, and accordingly the Magistrate wrote a letter to the Political Agent, Rewa Kántha, which he entrusted to Kurnaram. The terms of that letter explain the circumstances. It ran:—

"Mr. Kurnaram Durgaram Vakil, the bearer, has just informed me that the heir of the Mátar Thakore died about nine months ago, and that there is now at

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Chhaliyar, in the Darbar, a boy whom they intend to substitute for the dead boy.

"Mr. Kurnaram acts for the presumptive heir of the Thakore. He says that if enquiries are at once made at Chhaliyar the fraud will be detected, because the deceased Chandrasang was born on Kartik Sud 9th of 1938, that is, about two and half years ago, whilst the young pretender is about eight years old. Also that the latter's parents are living in Nándod.

"For the present I do not wish to make the matter public by searching for details in my office. But I shall be much obliged if you will have the goodness to make enquiries at your earliest convenience, so that it may be fixed what boy is asserted to be heir and what is his age, otherwise a boy of the proper age might be found. Mr. Kurnaram is furnished with full particulars. I request that you will favour me with the result of your enquiries."

This letter was taken by Kurnaram to the Political Agent, who on its receipt gave instruction to the Thanedar of Pandu, Parbhuram by name, to take with him Kurnaram and make the desired enquiries in his presence, and to report.

Parbhuram and Kurnaram went together to Chhaliar. There they are said to have taken a statement from the boy himself, statements from three other persons, a schoolmaster, a chobdar, and a karbhari, and to have, with the assistance of others, formed the opinion that the boy was about seven years old, and to have caused him to be measured, with the result that his height was found to be three feet six inches.

Parbhuram made his report to the Political Agent, enclosing the statements said to have been made in his presence, and a *Punchnama* said to have been signed on behalf of the members of what was called a *Punch*, which was composed in fact of two sowars in attendance on Parbhuram. Kurnaram was dead before the trial. The evidence of Parbhuram was taken on commission. The schoolmaster was a witness at the trial. The chobdar and the karbhari were not called, nor were the two sowars.

The enquiries at Chhaliar went no further, the boy being removed by his mother to Matar. Thereupon the District Magistrate gave another letter to Kurnaram addressed to the Mámlatdár of Amod, in the district of Broach, in which he appears to have instructed the Mámlatdár "to make the enquiries Mr. Kurnaram may suggest as secretly and rapidly as possible and allow the Darbar people no time to commit a fraud in regard to

a boy whom the Vakil asserts the Darbar have attempted to substitute for the real Thakore, who it is alleged died some months ago."

In accordance with that order the Mámlatdár accompanied by Kurnaram proceeded to make enquiries. He is said to have taken a statement from Jitba, the boy's alleged mother, and at Kurnaram's suggestion to have caused a measurement to be taken with a tape measure of the boy's height while he was lying on a cot, and that height was said to be found to be 3 feet 5½ inches.

When the case was before the High Court, and again on the argument of the appeal before their Lordships, objection was taken to the admissibility in evidence of much of the materials relating to the two enquiries just mentioned, and as to some of them at least it would apparently be very difficult to support their admissibility if it were necessary to decide the point. But the whole evidence seems to have been admitted without objection in the first Court, and their Lordships would have regretted if they had been obliged to dispose of the present appeal upon a question of legal admissibility, and the more so as the appeal has been heard *ex-parte*. Their Lordships are not under any such necessity because they think that, assuming the evidence to be admissible, it is of little, if any, value. This appears to them to follow from the purpose, the nature, and the circumstances of the enquiries.

The District Magistrate received information from Kurnaram which he apparently believed, and which, if true, showed that a grave crime was being, or was about to be, committed, which, if successful, would result in a great wrong with respect to properties in his district; and their Lordships do not doubt that that officer acted rightly in taking such steps as seemed to him necessary, in the emergency, for the prevention of the crime. But it must be observed that those enquiries, if they can be called official in any sense, were certainly not judicial. The effect of the orders was to place the services of the officials employed at the disposal of Kurnaram, the pleader of the complainant, in order to enable that gentleman to obtain material in support of a foregone conclusion. The enquiries were secret, no notice was

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given to anybody on behalf of the boy. Nobody was present throughout the enquiries to represent the boy or protect his interests. There was nobody to check the mode in which the alleged statements were elicited, whether by leading questions or otherwise, nobody to test the statements by cross-examination, nobody to watch the accuracy with which they were recorded.

Upon these broad considerations and without examining in detail the various inconsistencies and defects in the records and in the evidence relating to the enquiries, their Lordships are of opinion that practically no weight can properly be given to the proceedings at, or the results of, those enquiries.

As to the alleged statement by the boy himself, assuming it to be correctly reported, there is nothing to show whether the language is in any part his own, or whether it was put in his mouth by the person conducting the examination; and nothing could be easier than to extract by the latter process almost any statement from a frightened child, who suddenly finds himself alone in the custody of strangers, and some of them officials.

The alleged deposition of Jitba, so far as it was relied upon, refers to matters of which she could have no personal knowledge.

The evidence as to the apparent age of the boy, and as to the alleged measurement of his height, appears to their Lordships, on the grounds already stated, to be wholly untrustworthy. And in this they find themselves in agreement with both the Magistrates who dealt with the criminal charge in 1884 and 1885 and with the Judge who tried this case.

Their Lordships will humbly advise His Majesty that the decree of the High Court should be discharged and the suit dismissed with costs in both the Courts in India. The respondent must pay the costs of this appeal.

Appeal allowed.

Solicitor for the appellant—*E. Pagden.*

J. V. W.