

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thakur Sangram Singh v. Musst. Rajan Bai and another from the Court of the Judicial Commissioner of the Central Provinces of India; delivered July 2nd, 1885.

Present :

LORD WATSON.

SIR BARNES PEACOCK.

SIR ROBERT COLLIER.

SIR RICHARD COCHRAN.

SIR ARTHUR HOBBHOUSE.

IN this case an action was brought by Sangram Singh to recover possession of a Monzah called Bargaon against a lady of the name of Rajan Bai, and her son, Rajan Bai being a niece of Parmode Singh, who was its last possessor; and the Plaintiff sought to recover this Monzah by proving his descent through six generations from one Sada Rai, from whom Parmode had been descended through some five generations.

Without determining whether or not if the Plaintiff had proved his pedigree he would be entitled to succeed, their Lordships address themselves to the question whether he has proved it. He endeavoured to prove it in this way. Some oral evidence was called which may be dismissed with the observation that it went to the effect that he had performed the funeral rites of burning the body of Parmode, but would be very far from establishing such a title as he seeks to set up. His main evidence consisted of certain depositions of deceased persons which he contended were admissible in evidence. Those depositions had been taken in a proceeding which had been

instituted in 1863 between the two widows of Parmode Singh on the one side, and one Deo Singh, a claimant, on the other, with reference to the settlement of this Monzah Bargaon, and they seem to have been taken with a view to the making up of what are called the Wazi-bulurj, or village papers. The first of these is a deposition of one Hurbilas, who was a Mukhtar of these ladies.

The first question which arises is whether the evidence of the Mukhtar was admissible for the purpose for which it was put in. It is said to have been admissible under Act I. of 1872, section 32. "Statements written or verbal of
 " relevant facts made by a person who is dead
 " or who cannot be found, or who has become
 " incapable of giving evidence, or whose atten-
 " dance cannot be procured without an amount
 " of delay or expense which under the circum-
 " stance of the case appears to the Court un-
 " reasonable, are themselves relevant facts in the
 " following cases." And one of the cases put in sub-section 5 is:—"When the statement
 " relates to the existence of any relationship
 " between persons as to whose relationship the
 " person making the statement had special means
 " of knowledge, and when the statement was
 " made before the question in dispute was raised."

It has been objected that this Mukhtar had no special means of knowledge, and therefore that he does not come within the description of persons mentioned in this section. It nowhere appears that he had any other knowledge than as Mukhtar acting for these ladies. He is not shown to have been a member of the family, to have been intimately connected with it, or to have any special means of knowledge of the family concerns. Therefore in their Lordships' opinion he does not come within the description of a person having special means of knowledge. But

further it appears from his deposition that he is making a statement of the case on the part of his clients rather than professing to speak from his own knowledge of facts. He begins his deposition in this way :—“They (his clients) mean to show “ that the Taluka of Mouzah Bargaon was “ acquired by their ancestor Sada Rai, and has “ now devolved on Musst. Ladli Thakurani and “ Sawai Thakurani by reason of descent accord- “ ing to the genealogical tree,” and so on. It appears to their Lordships, therefore, on the two grounds, first, that he was not shown to have special knowledge, and, secondly, that he did not pretend to speak from his knowledge at all, that this deposition was not admissible.

There remain the depositions of the ladies, which are very short and which perhaps it may be convenient to read. First, there is that of Mussumat Sawai Thakurani, who was the younger widow of Parmode. She says :—“Musst. Ladli “ and Musst. Latto are the proper heirs to the “ property after my death. Delan Shah comes “ after them on their death.” Mussumat Ladli was the eldest widow, and it would seem that at this time she was not able to give evidence by reason of failure of her faculties. Mussumat Latto, with whom a settlement had been made by the Government (it does not clearly appear why), was the widow of a nephew of Parmode Singh, called Abhman Singh. Mussumat Sawai is asked, “Who are Delan Shah and Beni Singh?” and she says :—“The genealogical tree given by “ Musst. Ladli will show their lineage. Delan “ Shah is the legitimate son, and Beni Singh the “ offspring of a concubine.” It would also appear that Mussumat Ladli had at one time made some statement, which is not put in. Then the lady is asked :—“Musst. Ladli in her statement declares “ Deo Singh as the heir to the property, and the “ genealogical tree also shows that he bears a

“ close relation to you ; how is it then that you
 “ do not like to declare him so ? ” She answers :—
 “ The reason of this is, that when my husband,
 “ Parmode Singh, died, this Deo Singh put me
 “ to a great trouble. He tried to have the dakhil
 “ kharij made in his own name, but it was justly
 “ and rightly made in the name of Musst. Ladli.
 “ Similarly at the time when an inquiry of pro-
 “ prietary rights was going on, he skilfully
 “ induced Musst. Ladli to quarrel with me.
 “ Again, he does not like me, and so as a matter
 “ of course I do not like him. I am pleased
 “ with Delan Shah, because he is of my family
 “ and is always ready to obey me. (Question)
 “ Beni Singh also appears from the genealogical
 “ tree to be closely related to you : what do you
 “ say about him ? (Answer) I do not like even
 “ to hear his name.” This lady appears to think
 that Deo Singh had a better title than the Plaintiff,
 but she made no mention of Deo Singh, because
 she did not like him, and she mentioned the son
 of the Plaintiff because she did like him.

The deposition of the next lady is as follows :
 She is asked :—“ The proprietary rights of the
 “ Bargaon Taluka, pergunnah Bilshei have
 “ been conferred on you by the Government for
 “ life. Now it is asked of you who will succeed to
 “ your property after your death ? ” She answers,
 “ Must. Sawai Thakurani, my mother-in-law, is
 “ the heir of the estate after my death. When
 “ she dies Delan Shah, whom she has declared to
 “ be her heir, may succeed her. I quite agree
 “ with her in the statement she has made. I
 “ have no objection to make against it.”

Their Lordships agree with the Judicial Com-
 missioner, that the evidence of these two ladies is
 worthless. Therefore if the evidence of Hurbilas
 is struck out the Plaintiff has made no case.

The case came in the first instance before the
 Deputy Commissioner, who dismissed the Plain-

tiff's claim, thinking the evidence of Hurbilas was inadmissible, and if admissible not proving the Plaintiff's case. It subsequently went before the Additional Commissioner, who found in favour of the Plaintiff, he being of opinion that the evidence of Hurbilas was admissible on the ground that he had special knowledge, and he undoubtedly seems to have acted mainly on that evidence. Indeed there is no other evidence on which he could be presumed to act. The case came thirdly before the Judicial Commissioner, and the acting Judicial Commissioner reversed the Judgement of the Additional Commissioner mainly upon the ground that the Additional Commissioner was wrong in accepting the evidence of Hurbilas, it not having been shown that Hurbilas had any special means of knowledge. The Acting Judicial Commissioner, their Lordships think rightly, assumed the Judgement of the Additional Commissioner to have been given mainly, if not entirely, upon the ground of his believing the evidence of Hurbilas, and treating it as admissible. The Judicial Commissioner being of opinion that that evidence was not admissible, reversed the Judgement, and accordingly the Judgement of the original Court stands confirmed. It may be observed that a question was raised before the Judicial Commissioner as to whether directions should be given for the case to be sent back and evidence to be taken on the subject of the special knowledge of Hurbilas, but the Judicial Commissioner, in their Lordships' opinion rightly, declined to give any such directions.

For these reasons their Lordships are of opinion that the Judgement of the Judicial Commissioner was correct, and that this Appeal should be dismissed. They will accordingly humbly advise Her Majesty to that effect. The Appellant should pay the costs of this Appeal.

