

procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable. Neither any of the bards nor Raja Balbhadar Singh who assembled the bards of the family and with their assistance had the pedigree drawn up was called as a witness and no proof was given that they were within any of these descriptions which made it unnecessary to call them. A wajib-ul-urz of the village Aurungabad dated 26th October 1891 was relied upon for the Appellants. It contained a statement purporting to have been made by Pitam Singh deceased but it is too vague to be of any value in proof of the Appellants' claim. The oral evidence produced by the Plaintiffs was that of six witnesses, three of whom appear to have derived their information from family pedigrees which were not produced, and the others did not state the source of their information. The Appellate Court was of opinion that this evidence was not sufficient to prove the relationship with Munnu in which view their Lordships agree. Apparently the Subordinate Judge who decided in the Plaintiffs' favour was of this opinion as in his judgment he says it was "shown by the "genealogical table" and did not rely upon other evidence. The pedigree not being admissible the Appellants failed to prove that they were the collateral heirs of Munnu Singh and the Appellate Court without giving any finding on the alleged custom to exclude daughters and their issue set aside the decree of the lower Court and dismissed the suit. Their Lordships being of opinion that it was rightly dismissed they will humbly advise Her Majesty to affirm that decree and to dismiss this Appeal. The Appellants will pay the costs.

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The Subordinate Judge who tried the suit found that the Appellants' relationship to Munnu Singh and their reversionary title were proved, that Gulab Kuar's possession was only that of a Hindu widow, and that the will and deed of gift were invalid and made a decree in the Plaintiffs' favour. The Defendants appealed to the Court of the Judicial Commissioner of Oudh which has decided only one of the questions that were raised viz. whether the Appellants are the reversionary heirs of Munnu Singh.

To prove this the Appellants produced a pedigree of the family of Raja Pertab Singh which shows that the Plaintiffs are the collateral heirs of Munnu Singh. This pedigree was objected to as not being admissible in evidence. It was admitted by the Appellants' Counsel that it was prepared under the following circumstances as deposed to by one of their witnesses. He was examined in 1894 and his evidence is that the pedigree was prepared in his family 13 years ago. The bards were called to dictate it. It was prepared from the history given by them. It was copied from certain papers in the possession of the bards. In the year when the Raja's marriage was settled in Surajpur a dispute about it arose. Then they sent for the bards and got the pedigree prepared. The dispute was said to have been about the class of Thakurs to which the Raja referred to belonged and arose about the time of the death of Gulab Kuar. In their Lordships' opinion the Appellate Court has rightly held that the pedigree was not admissible or as the Indian Evidence Act says relevant, Sec. 32 of the Act which would make the statements in the pedigree relevant only applies when the statements are made by a person who is dead or cannot be found or has become incapable of giving evidence or whose attendance cannot be

also in favour of co-sharer. On the 7th January 1881 Gulab Kuar made a will by which she devised the village to her deceased daughter's three sons Sardar Singh and Baldeo Singh, the Respondents, and Bahadur Singh, who died before her. On the 8th July 1881 she made a gift of some land in the village to Durga Singh the other Respondent their father. Gulab Kuar died on the 12th July 1881 whereupon on the 10th August 1881 an order for mutation of names of Munnu Singh was made in favour of Sardar Singh and Baldeo Singh and the other claimants, the Appellants being referred to the Civil Court. Their suit was not instituted till the 30th November 1892 more than eleven years after the dismissal of their claim.

The case stated in their plaint is that they and Munnu Singh are the descendants of Raja Jugraj Sah by his second wife, that they are entitled to inherit the estate of Munnu Singh as his next heirs, that Gulab Kuar was in possession of the village only with the rights of a Hindu widow and as such was not competent to alienate the property beyond her lifetime, that the will and deed of gift are consequently invalid and that according to a well established family custom daughters and their issue are excluded from inheritance. The Respondents denied the alleged relationship of the Plaintiffs with Munnu Singh and their reversionary title and the existence of any custom by which daughters and their issue are excluded from inheritance. They alleged that the will and deed of gift were valid as Gulab Kuar was in possession of the village and had the rights of an absolute proprietor and that apart from the will Sardar Singh and Baldeo Singh being sons of Munnu Singh's daughters were entitled under the Hindu law to inherit his property on the death of his widow in preference to collateral heirs.

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Surjan Singh and Others v. Sardar Singh and Others, from the Court of the Judicial Commissioner of Oudh; delivered 21st July 1900.*

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Present at the Hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD LINDLEY.

SIR RICHARD COUCH.

SIR HENRY DE VILLIERS.

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[*Delivered by Sir Richard Couch.*]

The Appellants in this case sued for possession of the village of Piparya Andu on the ground that on the death of Mussammat Gulab Kuar the property devolved on them as the reversionary heirs of her deceased husband Munnu Singh. He was the proprietor of the village and the first summary settlement was made with him on the annexation of the Province of Oudh. After that he died and the second summary settlement of the village after the Mutiny was made with Gulab Kuar. The judgment of the Assistant Commissioner given on the 3rd August 1869 on a claim by her against the Government stated that Munnu Singh being hereditary proprietor held up to annexation, the summary settlement of 1857 was made with him, he died without leaving male issue and the settlement was therefore made with his widow. And the Court decreed the proprietary right in the entire village in favour of Gulab Kuar and