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an oath or affirmation to any witness in any form "common amongst or held binding by persons of the same race or persuasion to what he belongs and not repugnant to justice or decency, or not purporting to affect a third person" is covered by s. 13, in which there is not only no exclusive mention of the term Court, but in fact the word is not to be found there at all. The section which is in a different chapter from s. 8 runs thus: "No omission to take any oath, or make any affirmation, *no substitution* of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of the witness to state the truth." If the arbitrators in this case were authorised to affirm witnesses in the manner now in force in our Courts, and they substituted an oath on the Koran by request of one of the parties assented to by the other party, the substitution, under s. 13 of the Act, does not invalidate the evidence, and therefore does not render void the award founded on that evidence. I therefore would affirm the judgment of the lower appellate Court, and dismiss the appeal with costs.

APPELLATE CIVIL.

1878
January 2.

Before Mr. Justice Pearson and Mr. Justice Spankie.

MADHO DAS (PLAINTIFF) *v.* KAMTA DAS (DEFENDANT).*

Saniasi—Inheritance—Guru—Chela.

Amongst Saniasis generally no *chela* has a right as such to succeed to the property of his deceased *guru*. His right of succession depends upon his nomination by the deceased in his lifetime as his successor, which nomination is generally confirmed by the *mahants* of the neighbourhood assembled together to perform the funeral obsequies of the deceased. Where a *guru* does not nominate his successor from among his *chelas*, such successor is elected and installed by the *mahants* and principal persons of the sect in the neighbourhood upon the occasion of the funeral obsequies of the deceased. *Nirunjun Barthee v. Padaruth Barthee* (1) followed.

Where therefore a *chela* sued for possession of a village belonging to his deceased *guru*, founding such suit on his right of succession as *chela*, without alleg-

* Special Appeal, No. 336 of 1877, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Gorakhpur, dated the 30th June, 1877, affirming a decree of Maulvi Muhammad Kamil, Munsif of Basti, dated the 31st March, 1877.

(1) S. D. A., N.-W. P., 1864, vol. i, 512.

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ing that he had been nominated by the deceased as his successor and confirmed, or that he had been elected as successor to the deceased, such suit was held to be unmaintainable.

THIS was one of two suits against one Kamta Das for possession of a certain village. These suits were brought by Madho Das and Gopal Das respectively, and both were founded on the plaintiff's right of succession to the property of Paras Ram, deceased, as his *chela* or disciple. Kamta Das, defendant in these suits, alleged that the village had been presented to his *thakurdwara* at Ajudhia by the deceased. The Court of first instance held that the defendant's allegation was not proved, and that Gopal Das, being the sole disciple of Paras Ram, was entitled to the property in suit, and gave him a decree, and dismissed Madho Das' suit. On appeals by Madho Das and the defendant respectively, the lower appellate Court concurred with the Court of first instance in thinking that the defendant's allegation was not proved, but held that, as Madho Das was the senior disciple of Paras Ram, he had a preferential title to the property in suit. It, however, dismissed Madho Das' appeal, and allowed that of the defendant, as it held that both suits were unmaintainable, on the ground that neither of the plaintiffs had declared himself to have been chosen *mahant*, or elected such after the death of Paras Ram, nor had it been shown what was the custom of succession in regard to the shrine belonging to Paras Ram. Both the plaintiffs appealed to the High Court, each contending that having proved his right of succession it was not necessary to consider whether there had been a selection of a successor by Paras Ram or an installation by *mahants* after his death, and that if the decision of the Court of first instance was defective in this respect, the lower appellate Court should itself have ascertained what was customary.

Munshis *Hanuman Prasad* and *Sukh Ram*, for the appellant.

The *Senior Government Pleader* (Lala *Juala Prasad)* and Maulvi *Mehdi Hasan*, for the respondent.

The judgment of the Court was delivered by

SPANKIE, J., who, after stating the facts, continued :—With reference to former precedents of the late Sudder Dewanny Adawlut of these Provinces, we cannot say that the Subordinate Judge was in error in dismissing both claims for the reasons assigned by him. since it was not for him to make out a title which neither plaintiff alleged

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for himself as his ground of action. But he was right in noticing the defect, because it had been pleaded by the defendant in appeal.

It has been laid down by the late Sudder Dewanny Adawlut (1) that amongst the general tribe of fakirs called Saniasis (and the plaintiffs here appear to be of the description) a right of inheritance strictly so speaking to the property of a deceased *guru* or spiritual preceptor does not exist; but the right of succession depends upon the nomination of one amongst his disciples by the deceased *guru* in his own lifetime, which nomination is generally confirmed by the *mahants* of the neighbourhood assembled together for the purpose of performing the funeral obsequies of the deceased. Where no nomination has been made the succession is elective, the *mahants* and the principal persons of the sect in the neighbourhood choosing from amongst the disciples of the deceased *guru* the one who may appear to be the most qualified to be his successor, installing him then and there on the occasion of performing the funeral ceremonies of the late *guru*.

Neither plaintiff avers that he was nominated by the deceased Paras Ram during his life and confirmed afterwards, nor does either assert that, in consequence of Paras Ram's omission to nominate a successor, he had been elected after the latter's death by the neighbouring *mahants* and members of the sect; but both plaintiffs have based their claim on inheritance and discipleship, which would not be sufficient to establish a right of succession. We therefore dismiss the appeal and affirm the judgment of the lower appellate Court with costs.

Appeal dismissed.

APPELLATE CIVIL.

1878
January 2

Before Mr. Justice Spankie and Mr. Justice Oldfield.

JEONI (PLAINTIFF) *v.* BHAGWAN SAHAI AND ANOTHER (DEFENDANTS).*

Act VIII of 1859 (*Civil Procedure Code*), *s* 246—*Effect of Order under s.* 246—*Suit to establish Right—Limitation.*

B caused a certain dwelling-house to be attached in execution of a decree held by him against *M* as the property of *M*. *J* preferred a claim to the property which

* Special Appeal, No. 1012 of 1877, from a decree of W. C. Turner, Esq., Officiating Judge of Meerut, dated the 28th July, 1877, affirming a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 11th September, 1876.

(1) In *Nirunjun Barthee* v. *Padaruth Barthee*, S. D. A., N.-W. P., 1864, vol. i, 512