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IN THE MATTER OF SASHI BHUSHAN SARBADHICARY.

as an advocate and his capacity as an editor," and cited the case of *In re Wallace* (1) as an authority in support of his argument. But that was an entirely different case from the present. In delivering judgment, Lord Westbury (at p. 294) says:—

"It was an offence . . . committed by an individual in his capacity of a suitor in respect of his supposed rights as a suitor, and of an imaginary injury done to him as a suitor; and it had no connection whatever with his professional character, or anything done by him professionally, either as an advocate or an attorney."

Here the whole controversy arose from the misbehaviour of Mr. Sarbadhicary as an advocate conducting a case before the Court, and the contempt of which he was properly found guilty was committed in the attempt to vindicate his professional conduct in a publication for which he was solely responsible.

Their Lordships will say nothing as to the character of the libel, or as to the extent of the punishment awarded. They will humbly advise His Majesty to dismiss the appeal.

Appeal dismissed.

APPELLATE CIVIL.

1906
August 2.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir George Knox.

CHHAJJU GIR AND ANOTHER (DEFENDANTS) *v.* DIWAN (PLAINTIFF).*

Hindu Law—Grihast Goshains—Succession—Custom—Adoption of Chela by widow of deceased Goshain.

The plaintiff set up a custom as prevalent amongst the grihast goshains of Hardwar and other places adjacent in the United Provinces whereby the widow of a deceased goshain was entitled with the concurrence of the elders of the sect to adopt a chela and successor to her deceased husband. *Held* on the evidence that such custom was not established. *Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar* (2), *Khuggender Narain Chowdhry* v. *Sharupgir Oghorenath* (3), and *Govind Doss* v. *Ramsahoy Jemadar* (4) referred to.

Semble that the sect of grihast goshains living mostly in these provinces at Hardwar, Dehra Dun and other adjacent places, are subject generally to the ordinary rules of Hindu law. *Collector of Dacca* v. *Jagat Chunder Goswami* (5) referred to.

THE facts of this case are fully stated in the judgment of the Court.

* First Appeal No. 5 of 1904 from a decree of Babu Madho Das, Subordinate Judge of Saharanpur, dated the 11th of December 1903.

(1) (1866) L. R., 1. P. C., 283.
(2) (1872) 14 Moo., I. A., 570.
(3) (1878) I. L. R., 4 Calc., 543.
(4) (1843) 1 Fulton, 217.
(5) (1901) I. L. R., 28 Calc., 608.

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The Hon'ble Pandit *Sundar Lal* and Babu *Lalit Mohan Banerji*, for the appellants.

Babu *Jogindro Nath Chaudhri* and Pandit *Moti Lal Nehru*, for the respondent.

STANLEY, C.J., and KNOX, J.—The litigation which has given rise to this appeal concerns the property which belonged to three brothers, namely, Dalpat Gir, Ganpat Gir and Dhanpat Gir, the sons of one Ram Gir. Dhanpat Gir died about the year 1895, leaving his brothers surviving him. Dalpat Gir died in the month of January 1902, leaving a widow, Musammat Beldevi. On the 26th of May 1902, Ganpat Gir died, leaving the defendant Musammat Ram Rakkhi, who is said to have been a mistress, and a son by her, namely, the defendant Chhajju Gir. The parties belong to the goshain community, and the plaintiff's case is that the property of a member of that community devolves upon his chela or disciple, and that according to custom the widow of a deceased goshain, in case her husband has no disciple at the time of his death, may nominate a disciple with the authority of the members of the community, and that the disciple so nominated succeeds to the property of her husband; that the plaintiff was nominated by Musammat Beldevi with the consent of the community and so became what, we may term, a posthumous pupil of Dalpat Gir, and as such entitled to his property. It is not stated in the plaint how the disputed property was acquired. It is merely alleged that it was first owned by Mahant Ram Gir and on his death devolved upon Dalpat Gir, Ganpat Gir, and Dhanpat Gir. It has been found by the Court below that the property is not endowed property and that Dalpat Gir, Ganpat Gir and Dhanpat Gir held their shares of it separately. These findings are not challenged. The defendant appellant in his grounds of appeal impeached the findings that the property was not endowed property, but this ground was abandoned before us.

The custom upon which the plaintiff relies is thus stated in the plaint. It is first alleged that Dalpat Gir at the time of his death authorized his widow to make a disciple in his name, and then it is alleged that "there has been a practice and custom in the goshain community that on the death of a person the members of the community cause a disciple to be made in the name of the

deceased and make him occupy his place. Accordingly, Musammat Beldevi, in accordance with the permission of Dalpat Gir and also the practice in the Goshain community, assembled the members of the community, made the plaintiff a disciple in the name of Dalpat Gir, deceased, at her house on the 6th of June 1902, and performed all the necessary rites." It is further alleged in the plaint that "it is also necessary for a newly made disciple, wishing to be the representative and successor of a deceased person, that he should be duly declared representative and successor by the members of the community after a feast has been given. Accordingly, after a feast had been given on the 12th October 1902, the members of the community declared the plaintiff a mahant to take the place and be the representative of Dalpat Gir, deceased, and therefore the plaintiff is the lawful owner of his (Dalpat Gir's) estate." We may here state that Dalpat Gir and Ganpat Gir succeeded to the share of the estate of Dhanpat Gir upon his death. There is no dispute as to this. The plaintiff claims to be entitled not merely to the share of Dalpat Gir but also to the share of Ganpat Gir, but we are at a loss to understand how he can establish any right to this share.

The defendant Chhajju Gir and his mother denied the existence of the custom. Chhajju Gir claims to be entitled to the property of Ganpat Gir as his disciple and he also claims to be entitled to it under the will of Ganpat Gir, dated the 20th of February 1902. But before us he did not so much rest his case on the merits of his own title as on the weakness of the plaintiff respondent's case.

The parties belong to the order of Sannyasis known as *Giris*. That order with others was, we are told by Mr. Ghose in his work on Hindu Law, founded by the great Hindu Philosopher Sankara in the eighth century A.D. Originally the members of this order were supposed to renounce the world and were strictly ascetics. The wealth of the ascetic consisted of his stick, begging bowl and the like and was invaluable to his disciples. As Gautama ordained "an ascetic shall have no hoard." In the course of time these bodies acquired wealth, and, so far from practising habits of stern austerity took to habits of luxury and worldliness. A section of them married and become Gribast (house-holders), while

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the remainder observed celibacy and are known as Nihangs. Ram Gir was a Grihast (or house-holder) and his sons likewise. They had not therefore absolutely renounced the world and were not ascetics in the strict sense of the word. This must be borne in mind in dealing with the questions which we have to determine.

The special rule as to the devolution of the property of an ascetic, laid down in the Yajnavalkya (ii, 137), Mitakshara (ii, 8), Daya Bhaga (xi, 6, sections 35 and 36), namely, "the heirs of a hermit, of an ascetic, and of a professed student, are in their order the preceptor, the virtuous pupil and spiritual brother and associate in holiness," cannot be strictly applied in this case. Mr. Mayne says that a case coming under these special rules seldom occurs, that "when a hermit has any property which is not of secular origin, he generally holds it as the head of some math or religious endowment, and succession to such property is regulated by the special custom of the foundation." He then observes :— "No one can come under the above heads for the purpose of introducing a new rule of inheritance, unless he has absolutely retired from all earthly interests, and in fact become dead to the world. In such a case all property then vested in him passes to his legal heirs, who succeed to it at once. If his retirement is of a less complete character, the mere fact that he has assumed a religious title, and has even entered into a monastery, will not divest him of his property, or prevent his secular heirs from succeeding to any secular property which may have remained in his possession." (See 6th edition, p. 778.) Mr. Ghose in the second edition of his valuable work, at page 781, says as to this question :—"The property mentioned in the Yajnavalkya, as the Mitakshara and the Aparарka say, is the wealth of the hermit, invaluable to his disciples, *i.e.*, his stick, his begging bowl, and the like. Lands and money the Sannyasi cannot hold in his own right. But by the law of the land he is allowed to hold property in the same way as secular persons, and in such cases his secular heirs ought to take his property. In his comment upon a decision of a Bench of the Calcutta High Court in the case of the *Collector of Dacca* v. *Jagat Chunder Goswami* (1), holding that the preceptor of a deceased Bairagi was entitled to letters of administration of his

(1) (1901) I. L. R., 28 Calc., 608.

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estate, he observes, at page 788:—"With all respect to the learned Judges, it should be observed that according to Hindu law the ordinary rule of succession should apply to the case of that strange individual, the married ascetic. Indeed according to ancient law ascetics who have resumed worldly ways are slaves of the king and their property in strictness belongs to him."

It was contended in this suit on behalf of the appellant that a chela or disciple does not inherit the personal property of a Grihast (or house-holder) Goshain, and further, that the plaintiff respondent is not a disciple of Dalpat Gir. The learned Subordinate Judge held that though Ganpat Gir, Dalpat Gir and Dhanpat Gir held their shares separately and there was nothing to show that the property was endowed property, yet the sect of the Goshains to which they belonged is a semi-religious one and that "the same is the nature of their properties", that is, we take it, that the property in dispute though not endowed property is semi-religious property, whatever this means. He also held that the evidence adduced on behalf of the plaintiff established a custom among Goshains whereby a chela "is shaved in the name of a deceased mahant at the instance of his wife by the panches (elders), and if such chela performs the ceremony of bhandara and is installed on the gaddi of the deceased by the elders, he becomes the representative of the deceased with respect to his property." He further found that the plaintiff respondent was duly installed on the gaddi of Dalpat Gir by the elders of the sect in accordance with custom and performed the ceremony of bhandara, and is therefore the legal representative of Dalpat Gir. No distinction, it will be noticed, is here drawn between a Goshain who is a Nihang or who is possessed of a math, and a Goshain who is a householder and owns no endowed property.

There are two questions then for our determination. The first, whether or not the plaintiff respondent can be regarded as in any sense a chela or disciple of Dalpat Gir, and the second, whether or not a binding custom has been established whereby the personal property of a deceased Grihast or (house-holder) Goshain passes to his chela and not to his secular heirs.

First then let us see what a chela or disciple according to Hindu notions is. In the case of *Gobind Doss* v. *Ramsahoy*

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Jemadar, to be found reported in the Vyavastha Darpana by Shama Churn Sarkar, Vol. I, p. 299, and also in Fulton's Reports, Vol. I, p. 217, the plaintiff alleged that he was the chela or disciple and legal representative in estate, according to the laws and usages of Hindus, of one Makhan Das, deceased, a Hindu Bairagi (or religious devotee), and claimed to be entitled to sue as such for recovery of the property of the deceased. A defence was filed to the effect that a chela of a Hindu Bairagi does not, as such, succeed to the property of such a Bairagi in the event of intestacy. On behalf of the defendants it was contended that the three religious orders into which the twice born classes may enter are those of the Vanaprastha (hermit), the Sannyasi or Joti (the ascetic), and the Brahmachari (religious student), and reference was made to the passage of the Yajnavalkya which lays down that the wealth of a Vanaprastha is inherited by his Dharma bhratreka tirthana, or holy brother of the same hermitage, that of a Joti by satshishya (virtuous approved pupil), and that of a Brahmachari by his acharjya (spiritual guide). It was contended that, assuming the Bairagi to be a sufficient description of the Joti of Yajnavalkya his goods are not inherited by his chela or pupil in that capacity, but by his satshishya (virtuous approved pupil). Then it was pointed out that a chela after he had served the Joti for a year may be made a satshishya if the Joti thinks him worthy of the honour; that there is a period of servitude for 12 months necessary before the aspirant pupil can become a satshishya or partake of its privileges, and that the pupil who has not become a satshishya can never inherit it. It was held that the plaintiff failed to show his right to sue. An extract from a letter which the editor of the reports had received from Baboo Prussonno Comar Tagore, stated to be a gentleman of well known learning and repute at the time, is appended to the report, from which it appears that no chela of a deceased ascetic can inherit his property unless he can prove himself to be a siso (that is, we understand, a satshishya). The extract is as follows :—" My conclusion therefore is that a chela or servant may, if qualified, be admitted as siso, but the mere denomination of chela does not necessarily imply the meaning of siso. The Hindu law recognises the right of inheritance of the latter

and consequently no chela of a deceased ascetic can inherit his property unless the former can prove himself his siso too. This is a nice distinction which I am led to draw between the two phrases and their respective applicability from the concurrent authority of the shasters and the usages and customs of the country." We further find appended to the report an extract from the work called Tuntur Shar by Kishna Nanda, which describes the respective qualities which should form the character of a spiritual guide and his religious pupil, and later on the following passage appears :—"A year's residence and association with each other is required to form the connection of the spiritual guide and the pupil. It is also enjoined in the Sar Sungroho that a good spiritual guide should put his dependent pupil to a year's probation. A knowledge of the mysterious and excellent Shasters should not be imparted to every one without distinction, it should be imparted to a well-behaved pupil after a year's residence with him." We refer to this case merely for the purpose of showing what are the qualifications of a chela. In the case of *Khuggender Narain Chowdhry* v. *Sharupgir Oghorenath* (1) the principle of succession upon which one member of an order of ascetics succeeds to another was laid down as being based entirely upon fellowship and personal association with the ascetic, and it was said that a stranger, though of the same order of ascetics, is excluded. It thus appears that a person who has had no association with a spiritual guide cannot, except by a fiction, be his chela. A posthumous chela is a contradiction in terms.

The authority upon which Mr. *Chaudhri* on behalf of the respondent has strongly relied for the proposition that a posthumous disciple may be appointed to a deceased ascetic is to be found in West and Buhler's Hindu law, Vol. I, p. 565. There in answer to the question whether a Goshain either of the sect Puri, Giri or Bharathi acquired a vatan like that of a Patil or Kulkarani, can it descend to his or his wife's disciple, the reply is :— "Among the Goshains of the abovementioned sects, a disciple is as good an heir as a son among other people. If a disciple was not nominated by the male Goshain, his wife may nominate one to succeed to her estate in the same manner as a widow among

(1) (1878) I. L. R., 4 Calc., 543.

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other classes is allowed to adopt a son. No objection seems to exist to such a proceeding." The learned Pandits give us the authority for this answer the Vyavahara Mayukha, para. 142, 1—4. A reference to this work will show that it does not bear out the alleged practice. The paragraph referred to contains the extract from Yajnavalkya already quoted, stating the rule prevailing as regards the estates of ascetics, namely, "the heirs of a hermit, of an ascetic, and of a student, are in their order the preceptor, the virtuous pupil and the spiritual brother and associate in holiness." Moreover, the answer would seem to presuppose that the deceased Goshain for whom his wife may nominate a chela to succeed him had disciples, and that it was one of these disciples whom she might nominate as his successor. It does not, at least not clearly, support the suggestion that if a Goshain had no disciple during his life-time his wife could elect one after his death.

Let us see now on what evidence the novel custom which has been set up in this case is sought to be supported. Mahant Jhandu Nath, who is a Sannyasi, purported to give an account of the nomination and election of the plaintiff as a mahant after the death of Dalpat Gir, though he did not attend the meeting at which he was elected. He was asked whether any woman had ever made a disciple in the way in which the plaintiff, Diwan Gir, was made a disciple of Dalpat Gir, and his answer was in the first instance in the negative, and then he stated that Ram Saran Gir's wife made Ram Ratan Gir a disciple after the death of her husband, or that she caused the members of her brotherhood to make him a disciple. In answer to the further question whether Ram Gir was the holder of a math, his reply was that he could not be called the holder of a math, inasmuch as mahants who are grihasts are not holders of a math. He also stated that at the time of his death Ram Gir was not a nihang mahant, and that when a mahant is not nihang his sons become his heirs; and he followed this up by saying that when a mahant is not a nihang, that is, is a house-holder or grihast, his wife becomes his heir on his death. The evidence of this witness does not to any appreciable extent support the alleged custom. In answer to a question by the Court he stated that "if a grihast mahant should not give

permission to his wife as to the making of a disciple, his wife can on his death make a disciple in his name even without such permission. After the death of a house-holder mahant his widow has the same power with regard to the making of a disciple as he himself. As regards the power of making a disciple, there is no difference between a mahant and his widow." What authority the witness had for this statement, we are not informed. He is a comparatively young man, being only 34 years of age, and is not shown to have any special knowledge of the rules of the Goshain community.

Another witness, Gajraj Bharti, also a Goshain, deposed that Diwan Gir was made a disciple of Dalpat Gir four or five months after the death of Dalpat Gir. The panch, he said, were called by Musammat Beldevi to her house, when she told them that she wished to have Diwan Gir made a disciple in the name of her husband and that the Panch agreed to carry out her wish, and thereupon the necessary ceremony of installation was performed. He mentioned four or five cases in which in recent years disciples of deceased Goshains had been nominated by their wives. A panchayatnama was drawn up and signed by this and other witnesses testifying to the election and installation of Diwan Gir as the disciple of mahant Dalpat Gir. We shall refer to this document more particularly later on. It was produced by this witness. Cross-examined as to it the witness used these significant words:—"People said females have caused disciples to be made, but it is invalid. They tried to find out a precedent. I also did the same." It appears, therefore, that the partisans of the plaintiff found it necessary to search for a precedent for such an appointment as chela as that of the plaintiff. This witness is the brother of Kashi Bharti whose wife and Musammat Beldevi are sisters. Of the instances which he gave of the making of disciples by the widow of a deceased Goshain, two were disciples of Kashi Nath who were made disciples by his wife. We may point out that the election of the plaintiff Diwan as a disciple of Dalpat Gir led to disturbances which resulted in the bringing of criminal proceedings by Chhajju Gir against this witness and others.

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The next witness to whom we would refer is Ghanshiam Puri, also a Goshain, resident at Hardwar. In answer to the question :—"Should any one die leaving a widow among your community what will be her right as to the making of a disciple." (It will be noted that the question was not directed to the case of a grihast Goshain, but to the Goshain community generally); his reply was :—" A disciple is made. He is made in this way. The members of the *brotherhood* are invited. When they come to the place they ask the woman :—'Why have you invited us?' The woman says :—'Make a disciple in the name of my husband. The members order a man, a mahant :—'You should make a disciple, cut the tuft of his hair.' Disciples made in this way are to be found in my community." Then he mentioned the names of five persons who were made disciples in this way, and stated that they had got the properties of their spiritual guides. He further stated that the sons of a Goshain have no right to his property without their having been made disciples, and that if a Goshain left a wife and a son who had not been made a disciple, his property devolved upon the wife and not upon the son. He was asked his means of knowledge of this rule and stated that he heard it from his father and spiritual guide. It was further elicited from this witness that there are about 17 or 18 families of Goshains at Hardwar and that all of them are grihasts. He further deposed that a wife can make a disciple without obtaining permission from her husband to do so, and that children of a kept woman have the same right as those of a wedded wife.

Puran Gir and Sheoraj Gir gave evidence to the same effect. Sheoraj Gir admitted that his knowledge on the subject was derived from his having seen the initiation as disciples of Ratan Gir, Khushal Bharti and Bhajjan Gir, and also from hearing of it from the Goshains. He is a man of 34 years of age and is one of the parties against whom the complaint was lodged in the criminal Court by Chhajju Gir in connection with the initiation of the plaintiff Diwan Gir.

Ganesh Gir, another witness, also testified to the alleged custom and to the initiation of the plaintiff Diwan Gir. He stated that Bishnu of his village Rahmatpur had two disciples initiated on the death of her husband. He deposed, however, that

these disciples had left the village and that the property which belonged to the deceased Goshain had been sold by auction.

Hoshiar Gir, a resident of Daulatpur and a Goshain, deposed that he was initiated as a disciple of Harnand Gir by Harnand Gir's wife seven or eight years previously in the village of Daulatpur. In cross-examination it was elicited that Harnand Gir had no son and that the witness and Ganpat Gir were his nephews and that both the witness and Ganpat Gir inherited the property of Harnand Gir. Further he deposed that there was a will in his favour. It was not therefore out of the usual course that he and his brothers should inherit the property of Harnand Gir.

Several other witnesses were examined, but their evidence does not put the case further. It simply shows that there have been in the last 20 years several instances in which the widows of deceased Goshains nominated disciples, and that the disciples so nominated were recognised as the disciples of their deceased husbands. What the property was which they inherited or how it was acquired, or whether it was endowed property or not the evidence does not show.

It is a significant fact that on the initiation of the plaintiff, which, as we have said, was followed by disturbances leading to criminal proceedings, a panchayatnama was executed to testify to the election of the plaintiff, as a disciple of Dalpat Gir. This document we find was signed by all the witnesses without exception who have supported the plaintiff's case as regards the alleged custom. It is dated the 12th of October 1902, and recites the death of Dalpat Gir on the 16th of January 1902, without leaving any disciple, and the alleged practice among the Goshain community of Hardwar and the neighbourhood, that on the death of a mahant some person approved of by the community and the widow of the deceased should be nominated as a disciple. Then follows a declaration that on the 6th of June 1902, the members of the Goshain community assembled at the house of mahant Dalpat Gir with the consent of his widow Musammat Beldevi, made the plaintiff Diwan Gir, who is stated to be a relation of Dalpat Gir, and whom Dalpat Gir intended to make his disciple in his life-time, a disciple in the name of mahant Dalpat Gir. The document certifies that the real and actual disciple of Dalpat

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Gir is Diwan Gir, nominated and appointed lawfully according to law and the custom of the Goshain community, all the ceremonies essential and requisite for this appointment having been fully observed.

Now if the alleged custom was a recognised custom, it is not apparent what the necessity was for the preparation and signing of this document. Indeed it rather suggests that the parties to it had misgivings as to the propriety of their action in interfering with the devolution of the property of Dalpat Gir. The search for precedents is also suggestive. The object of making the plaintiff a disciple of Dalpat Gir manifestly was for the purpose of securing for him the property of Dalpat Gir.

Not a single document has been given in evidence in support of the alleged custom, and the cases in which chelas have been appointed by the widows of deceased house-holder Goshains are of recent date. It would seem that the small community of grihast Goshains at Hardwar are bent upon introducing a new usage as to the devolution of the property of the members of their community. What the necessity is for a grihast Goshain to have a chela is not apparent. Such a Goshain has not cast off the world and become an ascetic. On the contrary he is immersed in worldly affairs and has his family to look after. His time is not occupied in the study of the shastras or in imparting a knowledge of the shasters to pupils. It does not seem reasonable that the sons of such a Goshain under such circumstances should be excluded from inheriting his property by any chela who may be appointed by his widow.

As we pointed out, the defendants appellants did not rest their case in the Court below or before us so much upon the strength of their own title as upon the weakness of the plaintiff's case. This they were entitled to do. They did, however, adduce some evidence to prove that amongst grihast Goshains no one is placed upon the gaddi, as in the case of nihangs. An important matter is that Ram Gir made a will (No. 221C of the record), dated the 29th of November 1879, which is witnessed by a number of members of his community, and it left his property to his three sons in equal shares and no question was raised as to his power to do so. Moreover we find that his three sons partitioned his property

between them. This partition was carried out by a deed dated the 6th June 1892, and, as has already been pointed out, the three sons thereafter held their shares separately. In that deed it is recited that the property was owned and possessed by the executants as ancestral joint property, left by mahant Ram Gir, their deceased guru and father. A provision in that deed to the effect that the executants should not have power to transfer their shares to a stranger was relied on by the learned advocate for the plaintiff respondent, as showing that the property was not regarded as being subject to the ordinary rules governing secular property; but we do not see that this helps his case to any appreciable extent. Ganpat Gir disposed of his share by a will, dated the 20th of February 1902, in favour of a place of worship inside his house called Mahadeo Jeo and also in favour of the defendants appellants, Chhajju Gir and Musammat Ram Rakki.

Upon the whole we are unable to say that the custom set up by the plaintiff respondent was proved by such clear and unambiguous evidence as is requisite for the establishment of a custom or usage modifying the ordinary law of succession. A custom whereby the sons of the owner of the property may be deprived of their right to that property by the appointment, after the death of their father, of a chela to him by his widow or by the community to which they belong is a startling one. This is the custom which the plaintiff respondent sets up. We should require the clearest evidence of the antiquity of such a custom before we could give legal recognition to it. No evidence in proof of the antiquity of the custom has been given. We merely have a few instances of its adoption extending over a period of about 20 years. We may quote with advantage the language of their Lordships of the Privy Council in the case of *Ram Lakshmi Ammal* v. *Sivanantha Perumal Sethurayar* (1) in regard to special usages. At page 585 they say:—"Their Lordships are fully sensible of the importance and justice of giving effect to long established usages existing in particular districts and families in India, but it is of the essence of special usages modifying the ordinary law of succession that they should be ancient and invariable, and it is further essential that they should be

(1) (1872) 14 Moo., I. A., 571.

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established to be so by clear and unambiguous evidence. It is only by means of such evidence that the Court can be assured of their existence and that they posse s the conditions of antiquity and certainty on which alone their legal title to recognition depends." The evidence before us in this case in proof of the alleged custom is neither clear or unambiguous, and it by no means satisfies us that the alleged custom possesses the conditions of antiquity or certainty entitling it to recognition. The plaintiff respondent therefore has failed to establish the custom which he set up and his suit must fail.

We therefore allow the appeal, set aside the decree of the Court below and dismiss the plaintiff's suit with costs in this Court and in the lower Court.

Appeal decreed.

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August 8.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Rustomjee.

KHUDDO AND OTHERS (DEFENDANTS) *v.* DURGA PRASAD AND ANOTHER (PLAINTIFFS). *

Act No. XV of 1856 *(Hindu Widows' Re-marriage Act), section* 2—*Hindu widow—Re-marriage permitted by rules of caste—Widow not deprived of property of her first husband.*

Where the rules of her caste recognize the right of a Hindu widow to re-marry, a re-marriage has not the result of divesting her of the property of her first husband.

Har Saran Das v. *Nandi* (1), *Dharam Das* v. *Nand Lal* (2) and *Ranjit* v. *Radha Rani* (3) referred to.

G died, leaving a widow *T* and a mother *K*. *T*, being permitted to do so by the custom of the caste, married again. *T* transferred her interest in her first husband's property to *D* and *S*. *K* purported to sell the same property to L, who mortgaged it to *K P* and *N R*. *Held*, on suit by *D* and *S* for recovery of the property transferred, that the plaintiffs were not bound to reimburse the defendants (*K*, *L* and *L*'s mortgagees) in respect of any debts of *G* which they might have paid.

THE facts of this case are as follows:—

One Ghuran Kasodhan died possessed of certain immovable property leaving him surviving his widow Musammat Thakur Dei

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* Second Appeal No. 907 of 1905, from a decree of W. Tudball, Esq., District Judge of Gorakhpur, dated the 24th of July 1905, modifying a decree of Munshi Achal Behari, Subordinate Judge of Gorakhpur, dated the 3rd of May 1905.

(1) (1889) I. L. R., 11 All., 330. (2) Weekly Notes, 1889, p. 78.
(3) (1898) I. L. R., 20 All., 476.