more mauzas or parts of mauzas, or only a portion of one mauza. It is clear that the villages assigned to Uman Prasad did not form a separate mahal in the ordinary sense. The kabuliat of the taluqa in which they are included, a copy of which is on the record, shows that each village in the taluqa was separately assessed to revenue, and that the taluqdar entered into one engagement for the payment of the revenue on all the villages. The whole taluqa is, therefore, what is called in the Act, a taluqdari mahal, consisting of a large number of villages, each of which is separately assessed to revenue and may be regarded as an inferior mahal (see section 100 (*a*) of the Revenue Act of 1876). The plaintiff is certainly not a co-sharer in the taluqdari mahal, for the taluqdar has no co-sharer. Nor, as I have already pointed out, is the plaintiff a co-sharer in any of the inferior mahals just referred to of which the taluqa is made up."

Their Lordships think that the meaning which Mr. Chamier has attributed to the term 'mahal' is the proper meaning of the word in the Oudh Laws Act, 1876, and that although Gadadhar and Ganesh may have been jointly liable to the taluqdar for the Government revenue plus malikana, as the rent of villages and pattis assigned to Bisheshar and Uman under the compromise of 1864, Gadadhar and Ganesh were not at the date of the sale to Harihar co-sharers in any subdivision of the tenure in which the property in question was comprised or in the whole mahal.

Their Lordships will therefore humbly advise His Majesty that this appeal ought to be dismissed.

The appellant will pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellant: *Barrow, Rogers and Nevill.*

Solicitors for the first respondent: *T. L. Wilson and Co.*

J. V. W.

ANANT SINGH (PLAINTIFF) *v.* DURGA SINGH (DEFENDANT).

P. C. 1910 *April* 21, *May* 7.

[On appeal from the Court of the Judicial Commissioner of Oudh at Lucknow.]

Hindu law—Custom—Family custom in derogation of the ordinary Mitakshara law governing the parties—Proof of custom—Wajib-ul-arzes—Entries in case in which there was no instance of custom ever having been observed—Entries showing contradictory views and wishes of individuals rather than fact of existence of a custom.

In a family of Ahban Thakurs in Oudh the respondent took possession on the death of his full brother of a share of an estate called Deokalia. The appellant, step brother of the respondent and of the deceased, sued for a moiety of the share of the estate which had belonged to the deceased on the ground that

Present: Lord MACNAGHTEN, Lord COLLINS, Sir ARTHUR WILSON and Mr. AMEER ALI.

1910

ANANT SINGH v. DURGA SINGH.

by a custom in the family a step-brother was entitled to succeed equally with the full brother, supporting his case wholly by wajib-ul-arzes made 30 years before suit, the entries in which were admittedly made by the settlement officials after inquiries from the members of the family then living, and were duly attested and signed. The Court of the Judicial Commissioners found that, though there was no rebutting evidence, no instance was adduced in which the alleged custom had ever governed the devolution of the property, and that besides the entries as to the custom the wajib-ul-arzes contained other entries in which contradictory views of the parties who attested them were expressed, and which afforded internal evidence against the existence of the alleged custom, and held that the entries in the wajib-ul-arzes were not, although unrebutted, sufficient proof of a custom in derogation of the ordinary Mitakshara law.

Held (affirming the decision of the Judicial Commissioner) that no class of evidence was more likely to vary in value than that of wajib-ul-arzes—*Muhammad Imam Ali Khan* v. *Husain Khan* (1) and *Parbati Kunwar* v. *Chandarpal Kunwar* (2); and where as here it seemed probable that the entries recorded connoted the views of individuals as to the practice they would wish to see prevailing, rather than the ascertained fact of a well-established custom, the Judicial Commissioners rightly attached weight to the fact that no evidence at all was forthcoming of any instance in which the alleged custom had been observed.

APPEAL from a decree (29th May 1907) of the Court of the Judicial Commissioner of Oudh, which reversed a decree (22nd October 1906) of the Subordinate Judge of Tahsil Biswan in District Sitapur and dismissed the appellant's suit.

The suit was brought to recover a moiety of the property left by the appellant's half brother Ratan Singh, which consisted of a fourth share of an estate called Deokalia. The defendant (respondent in this appeal) was the full brother of Ratan Singh and his heir under the ordinary Mitakshara law prevailing in Oudh; but the plaintiff in his plaint set up a family custom that a step-brother was entitled to succeed equally with the full brother, and the only question for decision in this appeal was whether the custom had been established on the evidence.

The parties belonged to a family of Ahban Thakurs and previously to 1874 the estate of Deokalia was held in severalty by four members of the family, namely, Ranjit Singh (the father of Anant Singh, the appellant, and Durga Singh the respondent), his brother Balwant Singh, their first cousin Mannu Singh and one Mahipat Singh, who represented another branch of the family

(1) (1898) I. L. R., 26 Calc., 81 (92); L. R., 25 I. A., 161 (169.)
(2) (1909) I. L. R., 31 All., 457 (475); L. R., 36 I. A., 125 (131.)

and was the son of another first cousin then deceased. Mannu Singh died in 1874, and on his death and after the death of his widow who succeeded him litigation took place, in the course of which attempts were made to interfere with the course of the ordinary Mitakshara law in the family, but they were unsuccessful, and under that law a one-fourth share of the Deokalia estate became vested in Ratan Singh, which on his death in 1899 was held by his widow Muna Kunwar until her death in April, 1903. Thereupon Durga Singh claimed to be brought on the register as his sole heir. This claim was opposed by Anant Singh on the ground of the custom set up as above stated, but mutation of names was eventually effected in favour of Durga Singh, and Anant Singh, on 30th January, 1906, instituted the suit out of which this appeal arose.

The documentary evidence for the plaintiff included twenty wajib-ul-arzes which had been prepared with others in 1870-1872 and had been put forward in the litigation which took place after the deaths of Mannu Singh and his widow as stated above; and the documentary evidence for the defendant comprised (among others) the wajib-ul-arz of the village of Deokalia the parent village of the estate. The plaintiff called 13 witnesses in support of the alleged custom; and the defendant to rebut their evidence produced with a petition, dated 10th July 1906, copies of certain wajib-ul-arzes of villages of the families to which some of these witnesses belonged. Those documents stated that a real brother was preferred to a half brother. The defendant himself and four other Ahban Thakurs gave evidence for the defence.

The Subordinate Judge disbelieved the evidence with regard to one alleged instance of the custom; but he considered that three of the plaintiff's witnesses, the 9th Drigbijai Singh, the 10th Chandrika Bakhsh Singh and 11th Sital Prasad taken together with the wajib-ul-arzes were sufficient to establish the plaintiff's case.

As to the defendant's evidence he said:

"The defendant's first witness is defendant himself. He is the most interested man and his statement can have hardly any weight. Four more witnesses were examined on behalf of the defendant. They are Ahban Thakurs, but not members of the same family as the parties. Hence their testimony that the

1910

ANANT SINGH v. DURGA SINGH.

custom in question does not exist can have no bearing upon the family custom set up by the plaintiff. The defendant has failed to rebut the evidence led by the plaintiff. We have in the case wajib-ul-arzes recorded by the members of the family and containing a provision evidencing the existence of the custom in question. The plaintiff has examined some witnesses, out of whom at least two are near relatives of the parties. They were summoned by the defendant also. Their testimony is also in favour of the existence of the custom in question. The defendant relied upon the plaintiff's statement in the mutation case (Exhibit A-1). There the plaintiff stated that never it happened that a man died and was succeeded by his real and step brothers. It simply means that it never happened to the knowledge of the plaintiff. This statement of the plaintiff cannot destroy the value of the entries in the wajib-ul-arzes. The defendant's learned vakil, however, contends that the entries in the wajib-ul-arzes can have no weight unless instances in support of the custom are proved."

After mentioning four authorities cited to support that contention the Subordinate Judge proceeded :—

"It was held in the first case that a wajib-ul-arz is not necessarily to be accepted as sufficient proof of a custom. In the second case, wajib-ul-arzes were not accepted as sufficient evidence of custom because they contained varying records as to the custom that was in dispute in that case. In the third case, it was held that a Court is not bound to accept a single wajib-ul-arz as sufficient evidence of a particular custom. The fourth and the last case was decided by Their Lordships of the Privy Council, who have declined to accept a particular wajib-ul-arz as sufficient evidence of custom on grounds, amongst others, that it is so worded that it does not purport to be a record of immemorial custom. I do not think that it can be said on the strength of the above authorities that the wajib-ul-arzes relied upon in this case should not be accepted as sufficient evidence of the custom in question. On the contrary, in *Lekhraj Kuar* v. *Mahpal Singh* (1) Their Lordships of the Privy Council have observed that if certain wajib-ul-arzes were admissible in evidence they would prove a certain custom. The Oudh High Court has held a custom proved on the strength of wajib-ul-arzes and opinions only."

The Subordinate Judge therefore made a decree in favour of the plaintiff.

An appeal by the defendant to the Court of the Judicial Commissioner was heard by MR. SAUNDERS (officiating First Additional Judicial Commissioner) and MR. R. GREEVEN (Second Additional Judicial Commissioner), who reversed the Subordinate Judge's decision.

MR. SAUNDERS said :—

"The custom is set forth in clause 4 of the wajib-ul-arzes of three of the villages where portions of the property claimed lie and in the wajib-ul-arzes of 16 of the remaining villages, where other portions of the property

(1) (1879) I. L. R., 5 Calc., 744 (750) ; L. R. 7 I. A., 63 (67).

1910

ANANT SINGH v. DURGA SINGH.

of the late Ratan Singh lie, reference is made to clause 4 of these three wajib-ul-arzes. In the wajib-ul-arz of the remaining village, Deokalia, which gives its name to the estate of Ratan Singh, the custom is not set forth, but it is said that the heir-at-law, *'waris jaiz'* takes the property of the deceased brother. The alleged custom is the subject of a ruling in *Chandika Bakhsh* v. *Muna Kunwar*(1), wherein the parties relying on it said that it is prevalent amongst the Ahban Thakurs who migrated from Gujrat to Oudh several centuries ago. Several well-known rulings lay down that a custom as used in the sense of a rule which in a particular district, clan, or family has from long usage obtained the force of law must be ancient, continued, unaltered, uninterrupted, uniform, constant, peaceable, and acquiesced in, reasonable, certain and definite, compulsory and not optional to every person to follow or not. These being the requisites of a custom, it follows that it must be established by clear and unambiguous evidence. The evidence on which the plaintiff relies consists of the 20 wajib-ul-arzes already mentioned, and the oral testimony of two witnesses. In the lower court he examined some ten witnesses of the Ahban caste, all professing to be members of the family to which he belongs, but when questioned about their relationship, all but two of them were unable to explain it. These two witnesses are Drigbijai Singh, 50 years of age, and Chandika Bakhsh Singh, 30 years of age, at the time of their examination. All that the first could say was that Ranjit Singh and Balwant Singh had had the custom recorded in the wajib-ul-arz in his presence 36 years before. He must, then, have been 14 years old at the time. In cross examination he said that it was the mukhtars of these two persons who had caused the custom to be recorded. Chandika Bakhsh's statement is equally uncertain. It is that his father was his informant of the custom when he was 10 years of age. Such help is no help to the plaintiff.

"The learned pleader for the plaintiff insists that because no rebutting evidence has been produced, the entries regarding the custom on which he bases his claim should be accepted as sufficient evidence of the custom, its antiquity, certainty and immutability. He refers to the remark made by Mr. Spankie, late Additional Judicial Commissioner of Oudh, in *Pragi* v. *Baiju* (2) namely, that it is a question of fact whether a wajib-ul-arz is or not sufficient proof of a question. With this remark I quite agree and I am deciding the question accordingly. But in that ruling Mr. Spankie also held that a single wajib-ul-arz, even if not rebutted or not shown to have been irregularly prepared, is not necessarily sufficient proof of a custom, and what the learned pleader wants is that the entries in the wajib-ul-arz in suit should be held to be necessarily sufficient proof of the custom on which the plaintiff's claim is based because they are unrebutted. In the absence of any authority for this proposition I am not prepared to hold so.

"The wajib-ul-arzes are no doubt correct, that is the entries regarding the *haq* or *rasum wirasat* were made from inquiries on the Settlement Officer's part from the four surviving members of the family and are duly attested and signed. But when after a lapse of more than 30 years, from their preparation the plaintiff

(1) (1902) I. L. R., 24 All., L. R., 29 I. A., 70.

(2) (1901) 4 Oudh Cases, 71.

1910

ANANT SINGH v. DURGA SINGH.

brings a suit based on a clause of the entries and asks the Court to presume that that clause embodies an ancient invariable custom always recognized and acted on by the family for which the wajib-ul-arzes were prepared, the question naturally arises whether that presumption is the only one possible, or whether the documents afford internal evidence against the existence of the custom.

"No ruling, however, has been referred to wherein a particular custom of inheritance recorded in several wajib-ul-arzes has been held not to have been proved by those wajib-ul-arzes (with the correctness of the preparation of which no fault otherwise has been found) merely because in the same wajib-ul-arzes contradictory views of the parties who attested them in regard to other customs of inheritance have been entered.

"There are, however, many rulings in which the necessity of evidence in support of an entry in a wajib-ul-arz of a custom in derogation of Hindu law is represented, even though no rebutting evidence has been produced. I agree with the principle laid down in them. In the judgement in *Ratan Singh* v. *Chandika Bakhsh*, No. 85 of 1896, Mr. Chamier held that although a large number of the clan came forward and declared themselves bound by the alleged custom, and though the defendant had given all the evidence which in the nature of things was possible, while no rebutting evidence had been given by the plaintiff, it was for the former to establish the custom, and if the evidence in support of it is in itself insufficient, failure on the plaintiff's part to rebut that evidence will not render it sufficient. This decision was upheld by Their Lordships of the Privy Council in *Chandika Bakhsh* v. *Mana Kunwar* (4)."

After giving other rulings the judgement concluded :—

"The result of these rulings is that mere entries of a custom in derogation of Hindu Law in a wajib-ul-arz or in several wajib-ul-arzes unsupported by other evidence, even though not rebutted by evidence on the other side, are not sufficient proof of the existence of the custom, and I think that it would be unsafe to hold otherwise."

"My conclusion therefore is that the so-called custom is not proved, and that it is a mere tradition of the family which has never been acted on."

MR. GREEVEN said :—

"The novel feature in this case is that a number of wajib-ul-arzes were adduced to prove the custom, which is recorded in them with complete consistency. The gravamen of this appeal is that other entries, which are not connected with this custom, disclose that the wajib-ul-arzes as a whole, are entitled to no credit, because they embody in those entries, not family customs at all, but the inconsistent and discrepant wishes of individual members of the family. It is conceded that, for this proposition, no direct precedent can be quoted ; but I have no hesitation in holding that, if the defendant can show the wajib-ul-arzes to contain, in other passages, difficulties sufficient to render them, as a whole, unreliable, they should not be accepted, without strong confirmation, as proof of the custom in respect of which they disclose no inconsistency. Even without authority on the subject *(Pragi* v. *Baiju)* (2) it is obvious to my mind

(1) (1902) I. L. R., 24 All., 273 : L. R., 29 I. A., 70.

(2) (1901) 4 Oudh Cases 71

that the question whether a particular wajib-ul-arz is sufficient proof of a custom recorded therein is a matter, not of law, but of fact. There is of course a presumption of law in favour of the correctness of the entries in such a document; but, in the present instance, it is not seriously denied that the entries were made by the proper official in accordance with the requisite procedure; and the only question is whether the entries construed according to their contents, really do embody a record of custom actually prevailing in this family or are expressions of the wishes of particular members of the family on customs which they would like to prevail."

After referring to other rulings which lay down the general principles applicable to the evidence required in support of a family custom derogating from the ordinary law, the judgement continued :—

"It appears to me that we are entitled to expect very clear and unambiguous evidence before we accept as established the existence of a family custom which not merely is opposed to the ordinary law but is admittedly evidenced by no documents other than the wajib-ul-arzes and has never, in fact, to the knowledge of the parties or their witnesses, been followed in any instance of the devolution of property."

After criticising the wajib-ul-arzes produced and the many inconsistencies they contained, the judgement proceeded :—

"Before I leave the subject of the wajib-ul-arzes, I should like to direct attention, with regard to that relating to Dookalia (Exhibit A-4), to a circumstance which, in my opinion, seems to cast the gravest doubt on the existence of this custom. The wajib-ul-arz is of importance because it relates to the parent village; and it may be noticed that this was the last village of which the wajib-ul-arz was attested. In this document there is no mention of the custom asserted by the plaintiff; and, where it would have operated, it is declared that the heir-at-law is entitled to succeed. The learned pleader for the plaintiff has admitted that this wajib-ul-arz does not support his case, but contents himself with the argument which appears to me very inconclusive, that its contents are 'not inconsistent' with the existence of the custom."

In commenting on the oral evidence the judgement remarked as to that of Drigbijai and Chandika Bakhsh as follows :—

"The next testimony upon which the lower court appears to have placed some reliance is that of Drigbijai (P. W. 9), who gives as his authorities two other members of the family, Balwant and Ranjit, who according to his story, caused this custom to be recorded in his presence some 37 years before. In point of fact, there is no wajib-ul-arz in which Balwant and Ranjit personally caused entries to be recorded and in which there is a mention of any such custom. The witness was compelled to shift his ground by attempting to explain away the difference by professing to have heard of the custom from Balwant and Ranjit when he was ten or fourteen years of age. The last witness Chandrika Bakhsh (P. W. 10) gives his age as forty and professes to have derived his information from his father, Mahipat, twenty years ago. Mahipat did not personally dictate

1910

ANANT SINGH v. DURGA SINGH.

the entries in any wajib-ul-arz; and when the witness was pressed with regard to the information received from his father, he eventually had to admit ignorance."

And the judgement concluded:—

"For these reasons, I am of opinion, first, that no reliance can be placed upon the wajib-ul-arzes because they are not records of an ancient and certain custom, but embody irresponsible and conflicting wishes of members of the family; and secondly, that the oral evidence, whether taken by itself or in connection with the wajib-ul-arzes, is entirely insufficient to establish the professed custom."

In the result the appeal was allowed and the suit dismissed with costs.

On this appeal—

B. Dube for the appellant contended that the custom alleged was proved by the evidence adduced in support of it. The wajib-ul-arzes were accurate and official records of the custom actually prevailing in the family of the parties. They were prepared by Government officials after a careful inquiry at the revenue settlement more than 40 years ago, and all the then existing members of the family were unanimous in getting the custom recorded in the village administration papers. This was stated in the judgement of the First Judicial Commissioner, but he held that the mere entries of a custom in the wajib-ul-arzes were not sufficient to prove the custom. The second Judicial Commissioner held that the documents were not records of an ancient and certain custom, but "embody irresponsible and conflicting wishes of the members of the family." It was submitted that that finding was conjectural and opposed to the evidence on the record. Moreover, the oral evidence went to prove the existence of the custom; and the respondent himself relied on the evidence of two of the appellant's witnesses and cited them as his own witnesses. The evidence on the record was under the circumstances of the case sufficient to establish the alleged custom. Reference was made to *Lekraj Kuar* v. *Mahpal Singh* (1); the Oudh Settlement Circular No. 20 of 1863; Parliamentary Papers relating to Oudh 1869; *Maheshar Baksh Singh* v. *Ratan Singh* (2); *Chandika Bakhsh* v. *Muna Kunwar* (3); *Bajrangi Singh* v. *Manokarnika Bakhsh Singh* (4); *Muhammad Imam*

(1) (1879) I. L. R., 5 Calc., 744 (750): L. R., 7 I. A., 63 (67).
(2) (1893) I. L. R., 23 Calc., 766: L. R., 23 I. A., 57.
(3) (1901) I. L. R., 24 All., 273 (280): L. R., 29 I. A., 70 (72).
(4) (1907) I. L. R., 30 All., 1: L. R., 35 I. A., 1.

Ali Khan; v. *Husain Khan* (1); *Hub Ali* v. *Wazir-un-nissa* (2); *Parbati Kunwar* v. *Chandarpal Kunwar* (3); *Nandi Singh* v. *Sita Ram* (4); *Sarwari Begum* v. *Khatim-un-nissa* (5); *Ali Nasir Khan* v. *Manik Chand* (6); *Uman Parshad* v. *Gandharp Singh* (7) and the Oudh Land Revenue Act (XVII of 1876) sections 3 and 17.

DeGruyther, K. C., and *Kenworthy Brown* contended that the wajib-ul arzes did not prove the existence of the custom set up; nor was the oral evidence adduced by the appellant reliable evidence of the existence of any such custom. The onus was on the appellant to prove the custom, and the requisites for proof of a custom were set out in Mayne's Hindu law, 7th ed. pages 57, 58, but none of those essentials was to be found here. There was no instance of the alleged custom ever governing the inheritance of persons in the family. What happened in this case was that in 1870-72 wajib-ul-arzes were prepared with reference to various villages on the Deokalia estate, and in several of these documents statements inconsistent with the ordinary Hindu law were recorded on information supplied by some of the owners or their agents with regard to the right of inheritance. There was a want of consistency between certain of these statements, and in some instances the rules governing the devolution of property in the different branches of the family were not the same. Some of these wajib-ul-arzes were produced as evidence in a case which eventually came on appeal to the Privy Council—*Chandika Bakhsh* v. *Muna Kunwar* (8)—and were held to be insufficient to prove the custom then set up. It was submitted that parties could not by arrangement make evidence of a custom by getting it entered in a wajib-ul-arz. A proprietor of an estate could in that way have anything he pleased entered in a wajib-ul-arz, and that was what appeared to have taken place in this case. The evidence of Sital Prasad, appellant's witness No. 11 said :—"I recorded the wajib-ul-arz of Deokalia according to the instructions

(1) (1898) I. L. R., 26 Calc., 81 (92): L. R., 25 I. A., 161 (169).
(2) (1903) I. L. R., 26 All., 496 (506): L. R., 33 I. A., 107 (116)
(3) (1909) I. L. R., 31 All., 457 (475): L. R., 36 I. A., 125 (131).
(4) (1888) I. L. R., 16 Calc., 677 (681): L. R., 16 I. A., 44 (46).
(5) (1908) 12 Oudh Cases, 111 (112).
(6) (1902) I. L. R., 25 All., 90 (93, 96).
(7) (1887) I. L. R., 15 Calc., 20 (28, 29): L. R., 14 I. A., 127 (134).
(8) (1901) I. L. R., 24 All., 273: L. R., 29 I. A., 70.

1910

ANANT SINGH v. DURGA SINGH.

of Ranjit Singh. There has been no omission therein. There was some conflict regarding certain customs amongst Munna Singh, Mahipat Singh, Ranjit Singh, and Balwant Singh. They got separate entries made regarding them." These entries were clearly in accordance with the proprietors' own wishes and interest, and for their own purposes. Reference was made to the Parliamentary Papers relating to Oudh 1869; the Oudh Land Revenue Act (XVII of 1876), section 17; *Parbati Kunwar* v. *Chandarpal Kunwar* (1); *Nandi Singh* v. *Sita Ram* (2); *Lekraj Kuar* v. *Mahpal Singh* (3), where the question was mainly as to the admission of wajib-ul-arzes in evidence; *Uman Parshad* v. *Gandharp Singh* (4), where it was held that the settlement officer should not enter in the wajib-ul-arz a mere expression of the views of the proprietor. The conclusion come to by the Judicial Commissioner's court was entirely justified by the evidence, and particularly the expression of opinion by the Second Judicial Commissioner that the entries in the wajib-ul-arzes produced in this case were not records of a custom but consisted of the conflicting wishes of members of the family.

B. Dube replied.

1910, *May 7th*:—The judgement of their Lordships was delivered by LORD COLLINS.

The question on this appeal is as to the right of a step-brother in a Hindu family to share equally with a brother of the whole blood in the succession of a deceased brother. Ratan Singh died in 1899, leaving certain shares in the Deokalia estate, as well as some house property. He was succeeded by his widow, who died in April, 1903. On her death the appellant Anant Singh, his step-brother, claimed to be equally entitled with Durga Singh, his sole surviving brother of the whole blood, to share in his succession. His contention was upheld by the Subordinate Judge, but on appeal the learned Judicial Commissioners overruled his decision and held that the succession passed to the brother of the whole blood, the now respondent, alone. The learned Judicial Commissioners, in their Lordships' opinion, gave excellent reasons for refusing to regard the evidence adduced by

(1) (1909) I. L. R., 31 All., 457 (475); L. R., 36 I. A., 125 (135, 136).
(2) 1888) I. L. R., 16 Calc., 677; L. R., 16 I. A., 44.
(3) (1879) I. L. R., 5 Calc., 744 (750, 751, 755); L. R., 7 I. A., 63 (65, 72).
(4) (1887) I. L. R., 15 Calc., 20 (28, 29); L. R., 14 I. A., 127 (134).

1910

ANANT SINGH v. DURGA SINGH.

the plaintiff as sufficient to establish such a special custom in the family as to rebut the ordinary presumption that the Mitakshara Law prevailed. It has been pointed out more than once at this Board that there is no class of evidence that is more likely to vary in value according to circumstances than that of the wajib-ul-arzes—*Muhammad Imam Ali Khan* v. *Husain Khan* (1) and *Parbati Kunwar* v. *Chandurpal Kunwar* (2)—and where, as here, from internal evidence, it seems probable that the entries recorded connote the views of individuals as to the practice that they would wish to see prevailing rather than the ascertained fact of a well-established custom, the learned Judicial Commissioners properly attached weight to the fact that no evidence at all was forthcoming of any instance in which the alleged custom had been observed. The question involved was one of fact only, and Their Lordships see no reason whatever to differ from the opinion of the learned Judicial Commissioners.

Their Lordships will humbly advise His Majesty that the appeal be dismissed with costs.

Appeal dismissed.

Solicitors for the appellant: *Barrow, Rogers and Nevill.*

Solicitors for the respondent: *T. L. Wilson, & Co.*

J. V. W.

APPELLATE CIVIL.

1910

February 9.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

KARANPAL SINGH (PLAINTIFF) *v.* BHIMA MAL AND ANOTHER (DEFENDANTS).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 176 *and* 177—*Civil Procedure Code* (1882), *sections* 2 *and* 102—*Dismissal of suit for default—Order—Decree—Appeal.*

An order of a Rent Court dismissing a suit for default of appearance by the plaintiff does not amount to a decree, and consequently such order when passed by an Assistant Collector of the first class is not appealable. *Zohra* v. *Mangu Lal* (3) followed.

* Second Appeal No. 1060 of 1908 from a decree of Ahmad Ali, Additional Judge of Aligarh, dated the 29th of August 1908, confirming a decree of Ram Prasad, Assistant Collector, first class, of Bulandshahr, dated the 23rd October 1907.

(1) (1898) I. L. R., 26 Calc., 81 (92): L. R., 25 I. A., 161 (169.)
(2) (1909) I. L. R., 31 All., 457; L. R., 36 I. A., 125 (131).
(3) (1906) I. L. R., 28 All., 753.