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ex parte might be made within thirty days from the date of executing any process for enforcing the judgement. It is conceded that no such process was executed before the passing of the new Limitation Act. It has been repeatedly held that in a case of this kind the law of limitation to be applied is the the law existing at the time when the application is made. It is sufficient to refer to the decision of the Bombay High Court in *The Hope Mills Limited* v. *Vithaldas Pranjivandas* (1). There can be no doubt that the application is governed by the present Limitation Act and is barred thereby and was rightly dismissed both on the merits and also on the ground of limitation. This appeal fails and is dismissed with costs.

Appeal dismissed.

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June, 23.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Rafiq.

JAHANGIR AND ANOTHER (DEFENDANTS) *v.* SHEORAJ SINGH (PLAINTIFF) *

Act No. I of 1872 (*Indian Evidence Act*), *section* 32, *clause* (6)—*Pedigree.*

A document ancient and genuine, purporting to be a family pedigree was produced in evidence in a mutation case by one Jiraj. The record was brought before the civil court in a suit in which the plaintiff's relationship to one Hulas, the last male owner of certain property, was in question. Jiraj stated that he had received the pedigree from his grandfather. It was not proved who had prepared the pedigree. *Held* that it was not necessary to show who had made the statements mentioned in the pedigree and that it was admissible in evidence under section 32, clause (6), of the Evidence Act.

THE facts of this case were as follows :—

One Hulas was the last holder of certain property. His widow made a deed of gift of that property in favour of the defendant. The plaintiff brought this suit for a declaration that the deed should be declared to be inoperative after her death. The defendant pleaded that the plaintiff did not belong to the family. In support of his claim the plaintiff produced a pedigree which had once been produced in the Revenue Court. The pedigree was produced by a witness who alleged that he was a member of the family, and that it had been given to him by his

* Second Appeal No. 670 of 1914, from a decree of C. E. Guiterman, District Judge of Moradabad, dated the 5th of February, 1914, reversing a decree of Kunwar Sen, Additional Subordinate Judge of Moradabad, dated the 28th of August, 1913.

(1) (1910) 12 Bom. L. R., 780.

grandfather. No objection to its admissibility was taken at the time. The court below found the pedigree proved and decreed the suit.

The defendant appealed to the High Court.

Dr. *Surendra Nath Sen*, for the appellants:—

The pedigree was not admissible in evidence. It could be admitted under section 32 of the Evidence Act, and the first thing to prove was that it was a statement made by a deceased person. There was no proof of that in the present case. Further, the question here was whether the plaintiff bore a certain relationship to a certain deceased person and clause (6) would not apply. That clause only applied when the question was as to the relationship of two deceased persons. It was not known who made the statement, nor was it known that it was intended to be a statement containing an account of the relationship of persons deceased belonging to Jiraj's family. The paper in question was not a pedigree at all. A pedigree was a record kept in certain families to show the relationship of certain persons. Here clause (6) did not apply as the object of Jiraj by producing the pedigree was to establish a relationship between Hulas the deceased and Shewraj who was alive. There was, moreover, nothing to show that Jiraj's grandfather ever believed this to be the family pedigree. No statement not open to the tests of oath and cross-examination should be received in evidence till the requirements of section 32 were strictly complied with.

Mr. *Nehal Chand* (for Mr. *B. E. O'Conor* with him Mr. *A. H. C. Hamilton*), for the respondent:—

The person who produced the pedigree was a member of the same family as the deceased. He stated that he had got the pedigree from his grandfather. It must, therefore, be presumed that the pedigree was written by a person who was dead. Section 32, therefore, was clearly applicable and clause 6 of that section clearly covered the case. The paper which purported to be a pedigree was produced by a person who belonged to the family and got it from his grandfather. It was, therefore, admissible in evidence. Charts of pedigrees have been held to be admissible.

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Dr. *Surendra Nath Sen*, in reply, contended that all statements in a pedigree were not admissible, but only such statements as were usually made in it. In India horoscopes supplied the place of pedigrees and pedigrees such as were to be found in family Bibles were very rare among Hindus. The provision about family pedigrees was introduced into the Indian Evidence Act because the Act applied to Hindus, Muhammadans and Christians alike, the last of whom kept family pedigrees in Bibles, &c. *Jagatpal Singh*, v. *Jageshar Bakhsh Singh* (1). It had been held that a horoscope was admissible in evidence under section 32, clause (6), if it was proved that the man writing it had special means of knowledge; *Satis Chunder Mukhopadhya* v. *Mohendro Lal Pathuk* (2).

RICHARDS, C.J., and RAFIQ, J. :—This appeal arises out of a suit brought by the plaintiff for a declaration that a certain deed of gift made by one Musammat Sanjia in favour of the defendant should be held to be null and void after her death. The court of first instance dismissed the plaintiff's suit. The lower appellate court gave him a decree.

Having regard to the fact that this is a second appeal, the learned vakil on behalf of the defendant appellant was bound to admit that the only question that could be argued was the admissibility in evidence of a pedigree relied upon by the plaintiff, on the strength of which the lower appellate court decreed the plaintiff's claim. Objection to the admissibility of evidence taken at a late stage in litigation is not to be encouraged. The proper time to object to the admissibility of evidence is at the trial when the evidence is tendered, and it is then that the court should rule as to the admissibility or inadmissibility of the evidence. When the objection is taken at the proper time the party wishing to produce the evidence may be able to take steps to make the evidence admissible. If the objection is not taken until a late stage in the litigation it may mean that an appellate court is obliged to decide against the party on a technical ground or the time of the court is taken up in re-trying matters which ought to have been disposed of at the original hearing, the result being loss of public time and additional and unnecessary expense to the litigants.

(1) (1902) I. L. R., 25 All., 143. (2) (1890) I. L. R., 17 Calc., 849, (851).

The document in question is an alleged pedigree showing the relationship of a number of persons, and amongst others of Hulas (the husband of Musammat Sanjia) with one Bhusa. The document according to the finding of the court below was an ancient document and genuine. A witness of the name of Jiraj produced the document. It had been filed in mutation proceedings, the record of which case was sent for. Jiraj identified the document and stated that he had received it as a family pedigree from his grandfather. No objection appears to have been taken to the admissibility of this document in evidence in the court of first instance, although its genuineness was not admitted. In the lower appellate court it was objected to on the ground that it was inadmissible because no evidence was adduced to show who had made it. We think that having regard to the stage at which objection as to the admissibility of the document is made, we should treat it as a document produced by Jiraj, who proved that he received it from his grandfather, as being a document which contained the particulars of the family relationship. We must also assume that the statements made by the witness Jiraj are true, they having been believed by the lower appellate court. The question is whether under these circumstances the document is or is not admissible in evidence. Section 32 of the Evidence Act provides that "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 attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in certain cases. Clause (6) is as follows:—"When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tomb-stone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised." We assume for the purposes of our decision that it was impossible to show who in fact had made the statements contained in the pedigree, that the pedigree was made before the question in

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dispute had arisen, and necessarily that it was impossible to call as witness the person who had made the material statements contained in the pedigree. The question is whether on these assumptions the document was admissible. We think that it was. Neither the section nor the clause provides that it is necessary to show who it was that made the statements. In the case of an old pedigree it would be generally quite impossible to give evidence as to who was the author of the statements. We may point out that in the present case we are not called upon to express any opinion as to the genuineness of the document, or the weight to be attached to the evidence. In our opinion the decision of the court below was correct and ought to be affirmed. We accordingly dismiss the appeal with costs.

Appeal dismissed.

PRIVY COUNCIL.

*P. C.
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June, 3, 4.
July, 29.

BUDDHA SINGH AND OTHERS (PLAINTIFFS) *v.* LALTU SINGH AND OTHERS (DEFENDANTS.)

[On appeal from the High Court of Judicature at Allahabad.]

Hindu Law—Inheritance—Mitakshara—Benares school of Law—Great grandson of grandfather of deceased male owner—Grandson of great-grandfather of deceased—"Putra", Interpretation of—Lineal and collateral descendants—Blood relationship or propinquity among gotrajas—Test is capacity to offer oblations—Introducing into the decision the opinion of another Judge not a party to the judgement—Practice not approved.

On this appeal, in which the question for decision related to the order of succession under the Mitakshara, as expounded in the Benares school of Hindu Law, among the collateral kindred belonging to the same paternal stock as the last male owner, who died leaving no male issue.

Held (affirming the decisions of the courts in India) that the respondent (defendant) as the great grandson of the grandfather of the deceased, and the grandson of his paternal uncle, was the preferential heir as against the appellant (plaintiff) who was the grandson of the deceased's great grandfather.

The word "putra," which when used in relation to the last owner signifies and includes, "son, grandson and great grandson", thus including three degrees in the direct line of descent, is not to be construed in a literal and restricted sense when used in connexion with collateral relatives such as brother, uncle or grand-uncle.

Present:—Lord SHAW, Sir GEORGE FARWELL, Sir JOHN EDGE and Mr. AMEER ALI.