

share *per stirpes*. They also give instances, most of which are borne out by the khewats that have been tendered in evidence by the defence. One of the plaintiffs, Dharam Singh, himself had deposed in support of this custom in another case. In the present case he went into the witness-box and tried to explain his previous statement away but he failed. One of the witnesses for the plaintiffs, namely Phul Singh, also supports the case for the defence. On the evidence as it stands on the record we find that the custom stated by the defence stands proved. The oral evidence for the plaintiffs is quite unsatisfactory and does not rebut the evidence for the defence. Moreover, we find that the custom deposed to by the defence witnesses is borne out by the customary law as enunciated in paragraph 25 of Mr. Rattigan's book "Digest of Customary Law for the Punjab." We are, therefore, of opinion that the finding of the lower court on this point is correct.

As to the cross-objections the arrangement set up on behalf of the defence is not borne out by any evidence worth the name.

The result is that both the appeal and the cross-objections fail, and we dismiss both of them with costs.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

KRISHNANAND NATH KHARE (PLAINTIFF) v. RAJA RAM SINGH
(DEFENDANT).*

Hindu law—Joint Hindu family—Promissory note—Competence of managing member to execute a promissory note on behalf of the family—Act No. XXVI of 1881 (Negotiable Instruments Act), sections 4, 26, 27.

There is no inherent reason why the managing member of a joint Hindu family cannot in that capacity execute in his sole name a promissory note which shall be binding on the family as a whole and the property owned by it.

Krishna Ayyar v. Krishnasami Ayyar (1), *Krishnashet bin Ganshet Shetye v. Hari Valjibhatya* (2), and *Baisnab Chandra De v. Ramdhan Dhor* (3) followed. *Sadasuk Janki Das v. Sir Kishan Pershad* (4) distinguished.

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

* First Appeal No. 301 of 1919, from a decree of Maheshwari Prasad, Subordinate Judge of Gorakhpur, dated the 7th of June, 1919.

(1) (1900) L. L. R., 13 Mad., 597. (3) (1908) 11 G. W. N., 189.

(2) (1895) L. L. R., 20 Bom., 488. (4) (1918) L. L. R., 46 Calc., 668.

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KRISHNA-
NAND NATH
KHARR
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RAJA RAM
SINGH.

Munshi *Narayan Prasad Ashlona* and Munshi *Durga Charan Singh*, for the appellant.

Dr. *Surendra Nath Sen*, for the respondent.

PIGGOTT and WALSH, JJ.:—This is a suit brought upon a promissory note of 1917 which is admittedly a renewal of a previous promissory note of 1914 which in itself was a renewal of a previous promissory note of 1911. The promissory note in suit was made by one defendant only, namely Babu Ram Baran Singh. The suit is brought against Babu Ram Baran Singh and also his brother Babu Raja Ram Singh upon the ground that the note was made by the defendant Babu Ram Baran Singh as head and manager of a joint Hindu family of which his co-defendant Babu Raja Ram Singh was an adult member. The Kayastha Trading and Banking Corporation, Limited, were also made defendants as the original payees and endorsers in favour of the plaintiff. It appears that both the brothers, Babu Ram Baran Singh and Babu Raja Ram Singh, were makers of the original promissory note of 1911 of which the promissory note of 1914 was the first renewal. This fact may be of importance upon the question whether the note sued upon was in fact made for and on behalf of the joint family, of which the defendant Babu Ram Baran Singh was manager, for family purposes so as to bind the members of the family. The suit has been dismissed by the Subordinate Judge on the ground that there is no cause of action against the defendant Babu Raja Ram Singh for the reason that his name does not appear as a party to the promissory note in suit or as one of the makers thereof or, in other words, to quote the language of Lord BUCKMASTER in the report of the case decided by their Lordships of the Privy Council relied upon by the court below, upon the ground that the name of Babu Raja Ram Singh was not disclosed. In arriving at that conclusion, the court below has relied entirely upon the judgment of their Lordships in the case of *Sadasak Janki Das v. Siv Kishan Pershad* (1), and particularly upon the principle there laid down as follows:—“It is of the utmost importance that the name of a person or firm to be charged upon a negotiable document should be clearly stated on the face or on the back of the document, so that the responsibility is made plain and can be

(1) (1918) I. L. R., 46 Cal., 663.

instantly recognized as the document passes from hand to hand." In our opinion this principle has no application to the case of a joint Hindu family which it is sought to make liable through the signature of the managing member thereof. The position of the head of the joint Hindu family is not the same as that of an ordinary business agent and, according to the true view, a joint Hindu family, being a legal person according to Hindu law lawfully represented by and acting through the managing member or head thereof, is included ordinarily in the term "a person." In other words, a promissory note, according to the definition contained in section 4 of the Negotiable Instruments Act, is an instrument in writing containing an unconditional undertaking to pay a certain sum of money signed by the maker, and the question, in the event of the person in whose favour such document is given or into whose hands it may fall, in a case of an alleged joint Hindu family, is whether such a joint Hindu family is in fact the maker or only the member thereof who happens to have signed the document. Accepting the principles laid down in the authority referred to, we are of opinion that they have no application to the case before us. We are content to adopt without repeating at length the judgment of Mr. Justice SHEPHARD in the case of *Krishna Ayyar v. Krishnasami Ayyar* (1) on pages 604 to 606. The principle accepted by the majority of the Madras High Court in that decision has been inferentially accepted by the Bombay High Court in the case of *Krishnashet bin Ganshet Shetye v. Hari Valjibhatye* (2) and also by the Calcutta High Court in the case of *Baisnab Chandra De v. Ramdhon Dhor* (3) and we are content to follow the view taken in these three decisions.

It is extremely difficult to see how any other view could be made to work consistently with the ordinary methods of business and with the established principles of law. If the view taken by the lower court was sound, it would be necessary to require every person who was supposed to be a member of a joint Hindu family from whom it was desired to take a promissory note, to sign a document, including, presumably, even infant children in some way through their guardians. This would make it almost

(1) (1900) I. L. R., 28 Mad., 597. (2) (1895) I. L. R., 20 Bom., 488.

(3) (1906) 11 C. W. N., 139.

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impossible for all practical purposes for a joint Hindu family to make payments or take credit by giving a promissory note at all which can hardly be the intention of the Legislature and the Negotiable Instruments Act. The only other alternative would be to relegate the question of the liability of the joint family to the execution court, to be decided there as a substantive issue of fact, even although a member of such family had been joined as defendant to the suit and a decree had been given in his favour exempting him from liability.

No doubt from one point of view practical difficulties may be pointed out in commercial transactions upon the basis of this view being a correct one. All one can say is that it seems to be an incidence of the difficulty of applying the legislative provisions of Western law to the ancient customs and traditions of the law of the joint Hindu family; but the mischief of the latent ambiguity involved in the mere signature of the managing member of a firm circulated in the market, even although he may have signed as such managing member for and on behalf of the joint family as a whole which he represents, would still remain, inasmuch as it would always be open to the other members of the family to raise the question whether the promissory note was in fact made for family purposes or as a breach of trust by the persons whose signatures appeared thereon for and on behalf of the joint family. The suit having been dismissed as against the defendant Babu Raja Ram Singh as disclosing no cause of action, it must go back to be tried upon the merits. Inasmuch as the point raised is a substantial and important one and this particular defendant raised it in his own behalf and obtained a decree in his own favour, we think he must pay the costs of this appeal.

Appeal allowed.