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BALDEO PRASAD v. BINDESHRI PRASAD.

In support of this a case is cited which is to be found at page 974 of Vol. 46, Indian Cases. We find ourselves unable to accede to the contention of the plaintiff appellant. Under section 34 of Act III of 1899, the Act which was applicable at the time the two promissory notes of the 7th of January, 1912, and the 10th of April, 1912, were given, Ganesh Prasad was incompetent to enter into any contract which might involve him in pecuniary liability. In other words, any contract by which he made himself pecuniarily liable was void. The bond in suit was given by his son in consideration of the two promissory notes mentioned above. We do not think that it was the pious duty of the son to pay off such loans as were contracted by his father during the time that the estate was under the Court of Wards. The case relied on by the learned counsel on behalf of the plaintiff appellant is quite different to that before us. In that case both the father and the son gave a bond after the release of the estate from the management of the Court of Wards, not merely for the sum that was borrowed during the management of the Court of Wards but for a further sum that was advanced after the release of the estate. The facts of the two cases are quite different. We, therefore, agree with the lower court that the bond in suit is not enforceable against the defendant. The appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Lindsay.

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February, 15.

DHARAM SINGH AND ANOTHER (PLAINTIFFS) *v.* HIRA AND OTHERS (DEFENDANTS).*

Hindu law—Succession—Jats—Custom amongst Jats who have migrated from the Punjab.

Held that amongst Jats who have migrated to the district of Meerut from the Punjab there exists a custom by which reversioners irrespective of degree succeed equally to the last male owner, each branch of the family taking its share *per stirpes*.

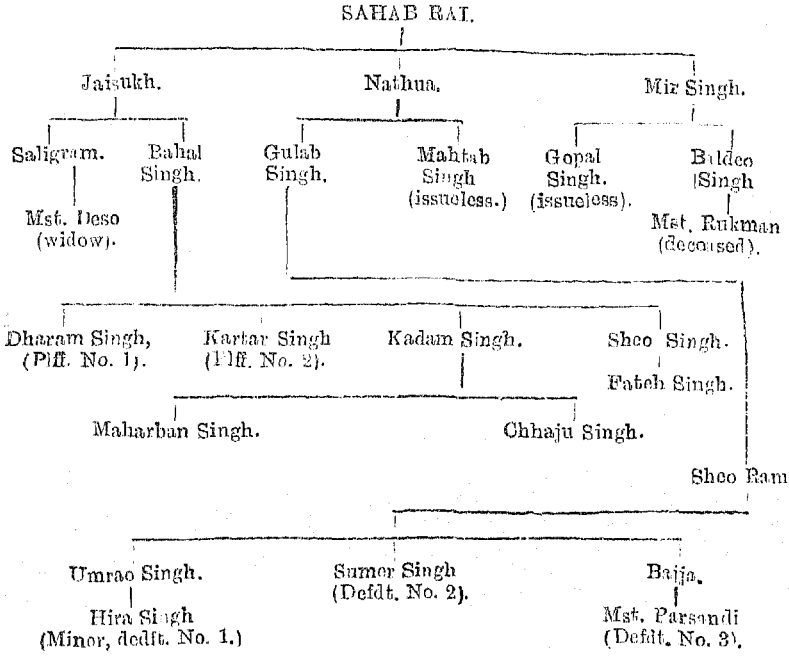
THE facts of this case sufficiently appear from the judgment of the Court.

Dr. *Kailas Nath Katju* and Munshi *Panna Lal*, for the appellants.

* First Appeal No. 287 of 1919, from a decree of Kashi Prasad, First Additional Subordinate Judge of Meerut, dated the 18th of June, 1919.

Mr. *N. C. Vaish* and Dr. *Surendra Nath Sen*, for the respondents.

MUHAMMAD RAFIQ and LINDSAY, JJ.:—The following pedigree will show the right under which the parties to the suit are litigating :—



Baldeo Singh, the grandson of Sahab Rai, is stated to have died long ago, leaving him surviving his brother Gopal Singh and his widow Musammat Rukman. She, after the death of her husband, lived with Gopal Singh as his wife by Karao marriage. The parties are Jats, and such a form of marriage is permissible in their community. Gopal Singh died about forty years ago. After the death of Gopal Singh, the name of Musammat Rukman was entered in the revenue papers in respect of the immovable property of the two brothers. She died on the 10th of July, 1915, without leaving any issue. After her death, there was a dispute in the Revenue Court between the descendants of Jaisukh and those of Nathua as to whose names should be entered in respect of the property which at one time belonged to Gopal Singh and Baldeo. The Revenue Court decided in favour of the descendants of Sheo Ram, and their names were accordingly

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mutated. Thereupon, on the 19th of September, 1917, the suit out of which this appeal has arisen was instituted by Dharam Singh and Kartar Singh, two of the grandsons of Jaisukh, for the recovery of the possession of the entire property of Gopal Singh and Baldeo Singh as the nearest reversioners. The claim was brought against the descendants of Sheo Ram who had been successful in the Revenue Court. The defendants resisted the suit on various pleas, two of which were that under an arrangement entered into between the descendants of Nathua and Jaisukh on the death of Baldeo Singh half of the property of the two brothers had been allotted to the descendants of Jaisukh and the other half was to go to the descendants of Nathua after the death of Gopal Singh and Musammat Rukman, and, secondly, that under a custom obtaining in the family to which the parties belonged, all the collaterals irrespective of their degree succeed equally to the last male holder. Both parties gave evidence. The court of first instance found that the family arrangement set up by the defence had not been proved. The custom advanced on behalf of the defence, however, was accepted by the court and a decree in favour of the plaintiffs to the extent of 1/4th in the property in suit was passed. The plaintiffs have come up in appeal before us and challenge the finding of the court below on the question of custom, while the defendants have filed cross-objections impeaching the finding of the lower court with regard to the alleged family arrangement stated in the written statement for the defence. It is contended on behalf of the plaintiffs appellants that the evidence on the record does not establish the custom upon which the defence relies for the proposition that all collaterals irrespective of degree succeed equally to the last male holder. The learned counsel for the appellants has read to us the evidence on behalf of the defence and has criticized it at length. We find that eleven witnesses were examined on behalf of the defence, all of whom with one voice say that the custom prevailing among the Jats who have migrated to Meerut from the Punjab, as to the succession of collaterals, is that reversioners irrespective of degree, that is, whether near or remote, inherit. They go on to explain in their evidence that when they say that reversioners succeed equally to the last male holder, they mean that each branch takes its

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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.

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February, 15.

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 Valjibhatye* (2), and *Baisnab Chandra De* v. *Ramdhon 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.

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

(1) (1900) I. L. R., 23 Mad., 597.
(2) (1895) I. L. R., 20 Bom., 486.
(3) (1906) 11 C. W. N., 139.
(4) (1918) I. L. R., 46 Calc., 668.