

556 and 557 the day originally fixed for the hearing is plainly and carefully distinguished from any other day to which the hearing may be adjourned. S. 561 requires a respondent to file any objection he may wish to take to a decree which is the subject of an appeal not less than seven days before the day fixed for the hearing of the appeal. The words "the date fixed for the hearing" in s. 561 correspond with the words "the day so fixed" in ss. 555, 556 and 557, and refer to the day fixed for the hearing under s. 552 of the Code.

1880

D^{RO} KISHEN
v.
MAHESHAR
SAHAI.

No doubt a day to which the hearing has been adjourned is also a day fixed for the hearing: but in the law, as has been pointed out, "the day to which the hearing has been adjourned" is distinguished from "the day fixed for hearing," and cannot be included in the latter expression.

Some appeals may be heard on the day fixed for the hearing. In others the hearing may be once or twice or more frequently adjourned. That some respondents should only have one opportunity of filing objections, and that others should have two or three or more numerous opportunities of so doing, and that the number of these opportunities should depend upon the accidents which prevent a Court from hearing an appeal on the day originally fixed for the hearing or on the days to which the hearing may have been adjourned, is a proposition which does not recommend itself to approval. A fixed and not a variable time within which objections may be filed is what the law may reasonably be understood to have established.

APPELATE CIVIL.

1881.
July 1.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.

PHUL KUAR (DEFENDANT) v. SURJAN PANDEY AND OTHERS (PLAINTIFFS).*

Evidence—Examination of witnesses—Mode of taking evidence.

Observations on the improper manner in which the evidence in cases is generally taken in the subordinate Courts, and in which it was taken in this case.

* First Appeal, No. 143 of 1880, from a decree of Hakim Rahat Ali, Subordinate Judge of Ghazipur, dated the 22nd September, 1879. Reported under the order of the Hon'ble the Chief Justice.

1881

 PHUL KUAR
 v.
 SURJAN
 PANDY.

For the purposes of this report it is sufficient to set forth the order of the High Court remanding the case to the lower appellate Court for the taking of additional evidence.

The *Senior Government Pleader** (Lala Juala Prasad) and Pandit *Ajudhia Nath*, for the appellant.

• Munshi *Sukh Ram*, for the respondents.

The Court (STUART, C. J., and TYRBELL, J.,) made the following order :—

STUART, C. J.—This case has been most inadequately tried, and the manner in which the evidence has been taken is most discreditable, although perhaps it is not much worse than the depositions taken in the districts usually are. In fact taking and recording evidence is a judicial duty which in these Provinces is performed in a manner which to say the least is most perfunctory, so much so as to make the so-called depositions in many if not in most cases utterly useless for the purposes of justice. The want of skill in this respect is specially and sadly observable in Native Judges, who seem altogether unacquainted with the manner in which witnesses should be examined. A witness's cause of knowledge of the facts to which he deposes is scarcely ever shown, and it is not too much to say that nine-tenths of the depositions which are brought before us scarcely contain a single word of evidence properly so-called. Nor as a rule are the parties themselves to a suit examined, although they must necessarily be best acquainted with the facts of their own case.

Even in this High Court pleaders of eminence and of undoubted ability and learning are often seen to read and to argue with all the composure of the most serious advocacy on the miserable contents of such worthless documents. In fact many judicial officers and pleaders, certainly those in the districts, seem utterly ignorant on the subject of evidence, and anything like the logical development of a witness's knowledge of facts is a legal *desideratum* which we fear it is hopeless to expect. We are all painfully familiar with the too ingenious resources of the "bazar witness," the ready ubiquity of whose persons, minds, and memories is so remarkable, yet scarcely more so than the easiness of the terms on

which, in popular estimation, their singular gifts may be procured. Indeed it would be difficult to account for the incredible and at best questionable contents of many a "deposition" excepting on this "bazar" theory. Again, we are informed that it is the practice of judicial officers, in many districts, to commit the important and delicate function of taking evidence to native mubarrirs. Such a practice indeed, if it does really exist, is most disgraceful, and any judicial officer whether European or Native who avails himself of it is utterly unfit to conduct the business of a Court of Law. It is the duty of all classes of presiding Judges to require that evidence in all litigated cases in which the facts are disputed shall be clearly and carefully taken before themselves, and for a Judge to depute this duty, or any part of it, to any inferior officer of his Court is simply gross misconduct in his office.

In the present case the main question at issue was that of the simple fact of the parentage of the appellant Phul Kuar. No attempt has been made to elicit from the witnesses examined on both sides any real or precise testimony on this question. Nothing has been done beyond recording in terms far from explicit statements of one set of persons affirming generally the plaintiff's case and of another set of persons contradicting it. We are constrained therefore to require the Court below to take and record evidence on the above question under the terms of ss. 568 (b), 569, and 570 of the Civil Procedure Code on the following questions:—
 What is the exact age at present of Phul Kuar; in what year and at what age did Raghunath Pandey die; what is the age of Kahlasi; what is the age of Ishri Pandey; and of the mother or mothers of his children; what children have been born to Ishri Pandey; what are their ages if living, or at what age and in what year they died? The plaintiffs and the defendant should be examined, as should also Ishri Pandey if still alive, if not his widow and his sons, on these points, as well as other witnesses who may be properly produced before the Court. And when all this evidence has been taken it will, along with the record, be returned to this Court for the final disposal of the appeal.

1881
 PHUL KUAR
 v
 SURJAN
 PANDEY.

Issues remitted.