APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.

1928 February, 14.

NARPAT AND ANOTHER (DEFENDANTS-APPELLANTS) *v.* MUHAMMAD RAFI (PLAINTIFF-RESPONDENT).*

Wajib-ul-arz, *how far evidence of customs recorded therein—Customs relating to cultivators' obligation to perform services and make gifts to zamindars—Entries in* wajib-ul-arz *of customs favourable and unfavourable to zamindars, evidentiary value of.*

It was the duty of a Settlement Officer in the First Regular Settlement to record the existence of a custom under which the cultivators of a village were under obligation to perform services or make gifts to the zamindars. The entry of such a custom in a *wajib-ul-arz* is certainly admissible in evidence, but the value of such evidence varies greatly. Where it is distinctly to the interest of the zamindars to record the existence of cultivators' liabilities, and where the cultivators had no opportunity of stating their experiences the value of such an entry is necessarily not so great as in a case where the zamindars are recording the existence of customs from which they themselves may suffer.

THIS case was originally heard by Mr. Justice WAZIR HASAN who referred it to a Bench. His order of reference is as follows :

HASAN, J. :—This case involves the question of the interpretation of a clause in the *wajib-ul-arz* of the village concerned. The defendants are tenants in the village and the plaintiff is the zamindar of the village. Under the custom recorded in the clause the defendants are liable to pay certain zamindari dues to the plaintiff if they are tenants of the *razil* class. The lower courts have differed on the interpretation of the word *razil* in this connection. The defendants are Ahirs by caste.

*Second Civil Appeal No. 267 of 1927, against the decree of Surendra Vikram Singh, Subordinate Judge of Lucknow, dated the 30th of April, 1927, reversing the decree of Yaqub Ali Rizvi, Munsif Hawali, Lucknow, dated the 4th of January, 1927, dismissing the plaintiff's claim.

The court of first instance is of opinion that as such they do not belong to the *razil* class of tenants. On the contrary, the lower appellate court is of opinion that they do belong to that class. The decision of the question will have wider effect than the decision of the issue in the present case alone. I, therefore, think that it will be proper that the matter be decided by a Bench of two Judges. Accordingly under section 14, sub-section (2) of the Oudh Courts Act, 1925, I refer this case to a Bench of two Judges for decision.

Mr. *Bisheshwar Nath, holding brief of* Mr. *A. P. Sen*, for the appellant.

Messrs. *Niamat Ullah* and *Ishri Prasad*, for the respondents.

STUART, C.J. and RAZA, J. :—This second appeal involves the determination of a question, which is of considerable importance to the villagers of Muhammad Nagar in the Lucknow district. It has been referred by a learned Judge of this Court for decision by a Bench. The question which we have to decide is as follows. Is there a binding custom by which cultivators of this village belonging to the class called *razil* are obliged to give to the zamindars of the village the services of a pair of bullocks for ploughing two days in the year and further a bundle of fodder and a bundle of *bhusa* annually? There can be no doubt as to the fact that in the *wajib-ul-arz* of 1869 it is recorded that cultivators of the *razil* class are under an obligation to supply these bullocks and supply this fodder and *bhusa* and that cultivators of the *kamin* class are under a liability to make certain presents to the zamindars on the occasion of the birth of the first son of the cultivator or marriages in the cultivator's family. The learned Munsif who tried the suit found against the liability of the cultivators on the grounds that the evidence afforded by the entry in the *wajib-ul-arz*

1928

NARPAT v. MUHAMMAD RAFI.

Stuart, C. J. and Raza, J.

was of doubtful value, and that the remaining evidence properly considered negatived the existence of any such custom. In appeal the learned Subordinate Judge took the view that the passage in the *wajib-ul-arz* conclusively established the existence of the custom, and expressed no opinion on the value of the remaining evidence. We have to consider the evidence as a whole. The entry in the *wajib-ul-arz* is certainly admissible in evidence. It was the duty of the Settlement Officers in the First Regular Settlement to record the existence of customs such as these, under which the cultivators of a village were under obligations to perform services or make gifts to the zamindars; but we consider that the value of such evidence varies very greatly. Where, as here, it is distinctly to the interest of the zamindars to record the existence of cultivators' liabilities and where the cultivators, as here had no opportunity of stating their experiences, the value of such an entry is necessarily not so great as in a case where the zamindars are recording the existence of customs from which they themselves may suffer; and we consider that the proper view in a case such as this is to look at the whole of the evidence and see whether upon it the existence of such a custom is established. We have the following facts established clearly. The plaintiff-respondent, who is the zamindar of the village, has purchased his interests very recently. Until three years before the institution of the suit out of which this appeal arises he had no interest in the village. In order to support the existence of this custom he has put into the witness-box his own ziladar, two Pasi Goraits who are in his service and one Pasi tenant whose evidence contradicts the obligations in the *wajib-ul-arz*, as he says that he supplies the services exacted from the *razil*, when on the face of it he must be a *kamin*, if anybody in the village is to be considered a *kamin*. This evidence is vague to a degree, and if believed is not

1928

NARPAT
v.
MUHAMMAD RAFI.

Stuart, C. J. and Raza, J.

sufficient to justify a finding that such a custom exists. We do not believe it. We arrive at our findings of fact under the provisions of section 103 of the Code of Civil Procedure as the lower appellate court has not arrived at findings on the value of the oral evidence. Against this there is very valuable evidence. A certain Shafi Ahmad, who was a former zamindar in the village and whose father was zamindar before him has deposed clearly and distinctly that there is no such custom in the village and that no cultivator ever gives these dues. We can see no reason for distrusting the evidence of this witness. Further there is the evidence of Sadhu Lal, who has been patwari of the village for nearly twenty years. He has never known of such dues being exacted. It is obvious that, if there had been a genuine custom of a binding nature, the patwari must have known of its existence. If the custom is real and effective the occasions on which goats are supplied to the zamindars on the birth of the first son of a *kamin* cultivator must be reasonably numerous and the supply of fodder and *bhusa* by *razil* would be especially apparent. We have it that Sadhu Lal, who, in our opinion is telling the truth, has never heard of anything of the kind. In these circumstances we are of opinion that, although the entry in the *wajib-ul-arz* exists, there is no custom established and that the cultivators of this village are under no obligation to perform these services. As this is our finding upon the major point it is unnecessary to enter into the question as to whether Ahirs are or are not *razil*. We accordingly allow this appeal and direct that the plaintiff-respondent's suit stand dismissed. The plaintiff-respondent will pay his own costs and those of the defendants-appellants in all courts.

Appeal allowed.