Penal Code, and though he was not charged with that offence, I do not think he can be prejudiced by his conviction being altered to one under section 457, Indian Penal Code. As it has been held that he was not directly responsible for the death of Hassu and as constructive responsibility is ruled out by the exclusion of section 460, Indian Penal Code, a reduction of the sentence awarded against him seems to be called for and his sentence is hereby reduced to one of four years' rigorous imprisonment for an offence under section 457, Indian Penal Code. To this extent his appeal is accepted.

Appeal accepted in part.

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Campbell.

GURBAKHSH SINGH—(PLAINTIFF)
Appellant

versus

Mst. PARTAPO AND ANOTHER—(DEFENDANTS)
Respondents.

1921
Nov. 16.

Civil Appeal No. 1551 of 1918.

Custom—Adoption—of daughter's son—Dhanoi Jats—tahsil *Kharar, district Ambala*—Wajib-ul arz—*value of.*

Held, that by custom among *Dhanoi Jats* of *tahsil* Kharar the adoption of a daughter's son is valid.

Sunder Singh v. Mst. *Mano* (1), followed.

Ralla v. *Budha* (2), referred to and distinguished.

Held also, that a *Wajib-ul-arz* being part of a Revenue Record is of greater authority than a *Riwaj-i-am* which is of general application and is not drawn up in respect of individual villages.

Second appeal from the decree of Lt.-Colonel B. O. Roe, District Judge, Ambala, dated the 2nd February 1918, affirming that of Lala *Rangi Lal, Subordinate Judge,* 1s *Class, Rupar, dated the 21st November 1917, dismissing the plaintiff's suit.*

(1) 63 P. R. 1888, (2) 50 P. R. 1893 (F. B.).

1921

GURBAKHSH SINGH v. *Mst.* PARTAPO.

SHEO NARAIN, for Appellant.

N. C. MEHRA, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL, J.—In this suit a collateral in the fourth degree seeks to set aside an adoption of a daughter's son.

The parties are *Dhanoi Jats* of *tahsil* Kharar, Ambala; the *Wajib-ul-arz* of 1852 favours a gift to a daughter's son, and the customary adoption of such a son is merely another form of a gift. *Sunaer Singh* v. Mst. *Mano* (1) is a ruling concerning this very family and in that case the entry in the *Wajib-ul-arz* which was supported by affirmative evidence of the validity of the custom was accepted.

Against that ruling there has been adduced by the plaintiff-appellant nothing tangible. *Ralla* v. *Budha* (2) does not weaken the authority of *Sundar Singh* v. Mst. *Mano*(1). In the latter case the burden of proving the custom was laid on the persons asserting it.

However that may be, the fact remains that we have in this very family a clear judicially proved instance of the alleged custom, which is moreover supported by the *Wajib-ul-arz*; this document is a part of the Revenue Record and therefore of greater authority than a *Riwaj-i-am* which is of general application and is not drawn up in respect of individual villages.

We see no reason to differ from the Courts below which hold that the custom recited has been established and we dismiss the appeal with costs.

Appeal dismissed.

(1) 68 P. R. 1888.

(2) 50 P. R. 1893 (F. B.).