APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Zafar Ali.

GANGA RAM AND ANOTHER (DEFENDANTS) Appellants

versus

Mst. INDI AND ANOTHER (PLAINTIFFS), Respondents.

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Dec. 9.

Civil Appeal No. 2445 of 1921.

*Custom—Succession—Ancestral property—Daughter or collaterals, 6th degree—*Jats *of* Mauza *Khurchanpur, tahsil Ambala—*Riwaj-i-am.

Held, that the defendants on whom the *onus* lay in accordance with the general custom of the Ambala district had failed to prove that among *Jats* collaterals in the 6th degree excluded the daughter in the succession to ancestral property.

Second appeal from the decree of A. H. Parker, Esquire, District Judge, Ambala, dated the 17th August 1921, affirming that of Lala *Munshi Ram, Junior Subordinate Judge, 1st Class, Ambala, dated the 21st March 1921, decreeing the claim.*

GOPAL CHAND, for Appellants.

MOHSIN SHAH, for Respondents.

The judgment of the Court was delivered by—

HARRISON J.—This is a second appeal supported by a certificate, the custom involved being whether amongst *Jats* of village Khurchanpur in the Ambala tahsil daughters exclude collaterals of the 6th degree from succession to ancestral property.

The trial Court placed the *onus* upon the collaterals, and the learned District Judge held, that the *onus* had been rightly placed, and secondly, that it had not been discharged.

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Before us both these points have been argued. The entry in the published Customary Law of the Ambala district as a whole is to the effect that " the commonly received custom for all tribes except *Sayads* and some *Rains* is to exclude the daughter wherever collaterals can be traced up to the great-great-grandfather ", *i.e.*, that the collaterals in the 4th degree and no further exclude the daughter. It is stated that both *Jats* and *Gujars* were inclined to go still further and to say that the daughters never succeed, the land going to the proprietors of the *patti* rather than to the daughter, but the compiler of the work, Mr. Whitehead, held that while these views represented the feelings of these two communities it was doubtful whether there was any actual custom to this effect.

Counsel for the defendant-appellants relies on an entry in a vernacular document which is described in the heading as a copy of the " *Riwaj-i-am* of Ambala " and no more. There the reply of the *Jats* is shown as being that collaterals up to the 7th degree exclude daughters. A long list of so-called instances follows, every one of which is to the effect that the daughter in the particular case excluded the collaterals.

Counsel for the respondents has put forward the ingenious theory that the instances show that the main entry contains a clerical error and should be to the effect that collaterals of the 7th degree do not exclude daughters.

This is possible, but this vernacular entry, whatever it may represent exactly, is supported by no instances and is opposed to the Customary Law of the district published by Government and compiled by the Settlement Officer. It is possible that there may

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have been some separate vernacular compilation for the different *Tahsils*, but the document is not shown as referring to any particular *Tahsil* and nobody has been able to throw any light upon the matter.

Counsel for the appellants urges that this vernacular document must be accepted as against the clear statement in the Customary Law of the district and is sufficient in itself, unsupported by instances or rather supported only by instances which contradict it, to shift the burden of proof from the collaterals to the daughter. We think not, and we are of opinion that the burden was rightly placed upon the collaterals. The evidence produced by these collaterals is not, in our opinion, of any value.

We, therefore, dismiss the appeal with costs, and find that it is not established that collaterals in the 5th degree exclude daughters amongst *Jats* of the Ambala district.

C. H. O.

Appeal dismissed.