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the Governor-General, Punjab States, inviting his attention to the law on the subject as explained in this order and requesting him to execute the commission.

When the witnesses have been examined, the Magistrate will comply with the order of remand, dated the 20th of May, 1927.

*N. F. E.*

*Case remanded.*

**APPELLATE CIVIL.**

*Before Mr. Justice Broadway and Mr. Justice Jai Lal.*

1927  
 Nov. 22.

PIR BAKHSI (DEFENDANT) Appellant

*versus*

MST. GHULAM BIBI AND ANOTHER }  
 (PLAINTIFFS) } Respondents.  
 MST. REHMAT JAN (DEFENDANT) }

**Civil Appeal No. 994 of 1923.**

*Custom—Succession—to occupancy rights—in Lyallpur district—Daughters or collaterals—General custom—parties originally of Amritsar district—whether special custom proved—Colonization of Government Lands (Punjab) Act, V of 1912, section 20 (amended)—non-applicability of—where original tenant died prior to 1912.*

*Held*, that as Nathu, the original tenant of the land in dispute, died before the coming into force of the Colonization of Government Lands Act of 1912, the devolution of the property is not governed thereby; and the succession to his estate must be determined by ascertaining the ordinary custom by which the parties are governed—(vide section 20 of Act V of 1912, as amended by Act III of 1920).

*Held further*, that the general rule of custom is that in the succession to self-acquired or non-ancestral land, daughters exclude collaterals; and this appeared to be the rule in the Amritsar district (from which district Nathu originally migrated to Lyallpur).

Rattigan's Digest of Customary Law, para. 23, referred to.

And that the defendant collateral had failed to prove any special custom to the contrary.

*First appeal from the decree of Lala Jaswant Rai, Taneja, Senior Subordinate Judge, Lyallpur, dated the 18th April 1923, granting the plaintiffs the declaration as prayed for.*

ABDUL GHANI, for Appellant

MEHR CHAND, MAHAJAN, and FAKIR CHAND, for  
MOTI SAGAR, for Respondents.

#### JUDGMENT.

BROADWAY J.—This is an appeal by one Pir Bakhsh against a declaratory decree passed by the Senior Subordinate Judge of Lyallpur declaring that the plaintiffs, the daughters of one Nathu, were entitled to succeed to the land in dispute after the death of their mother *Mussammāt* Rahmate. The learned Senior Subordinate Judge has written a lengthy judgment in which all the points have been carefully discussed. It appears that the original tenant of this land was one Nathu who was granted the holding as an *abadkar* and subsequently acquired occupancy rights therein. He died in 1908 leaving him surviving a widow, *Mussammāt* Rahmate, and two daughters, *Mussammāt* Ghulam Bibi and Mehtāh Bibi. *Mussammāt* Rahmate attempted to dispose of this tenancy but her attempt failed as the revenue authorities declined to sanction the alienation proposed by her. Later on she made a gift in favour of her daughters. When this gift was placed before the revenue authorities for sanction Pir Bakhsh protested, urging that he was the ultimate heir to this property as a collateral of the deceased Nathu. The

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revenue authorities accordingly declined to enter up the gift and referred the parties to a Civil Court. Thereupon the two daughters (both of them married) of Nathu brought a suit for a declaration of their rights as the heir of Nathu impleading *Mussammat* Rahmate, widow of Nathu, and Pir Bakhsh as defendants. *Mussammat* Rahmate admitted the claim while Pir Bakhsh contested it.

It has been urged before us that the suit is governed by the provisions of Act V of 1912 as amended by Act III of 1920. This appears to have been the position taken up by both parties in the Court below. In the grounds of appeal to this Court it was alleged that Act V of 1912 did not apply. The learned Advocate for the appellant appears to have been in somewhat of a quandary as to the line he was prepared to take in this Court for at one time he said that he was prepared to give up that ground and urged that the parties were governed by the Act of 1912. It seems to me, however, that that Act does not afford any assistance in this matter. The succession in this case is clearly succession to Nathu and section 20 of Act V of 1912 as amended by Act III of 1920 provides for the devolution of a tenancy in cases where after the commencement of the Act any original tenant dies. Admittedly in the present case Nathu died in 1908 and succession to his rights therefore is clearly not governed by this section. In order to ascertain who his successor is, recourse must be had to the ordinary custom by which the parties are governed. The general rule of custom as laid down in paragraph 23 of the Digest of Customary Law by Sir William Rattigan is that daughters exclude collaterals in succession to self-acquired property. Admittedly this estate is the self-acquired or non-an-

cestral property of Nathu and, therefore, by the general custom the plaintiffs in this case would exclude collaterals. An attempt was made by Pir Bakhsh to establish a custom to the contrary and certain evidence was led in support. That evidence has been carefully examined by the learned Senior Subordinate Judge and it has been pointed out that the instances given by the witnesses have no real application to the facts before us whereas the instances relied on and proved by the plaintiffs support their claim. So far as the Customary Law of the Amritsar District (from which District Nathu originally migrated to Lyallpur) shows, the general trend of opinion was that daughters succeed to non-ancestral property to the exclusion of agnates. In every respect, therefore, the claim of the daughters appears to me to be superior to that of Pir Bakhsh and I would, therefore, dismiss this appeal with costs.

JAI LAL J.—I agree.

N. F. E.

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*Appeal dismissed.*