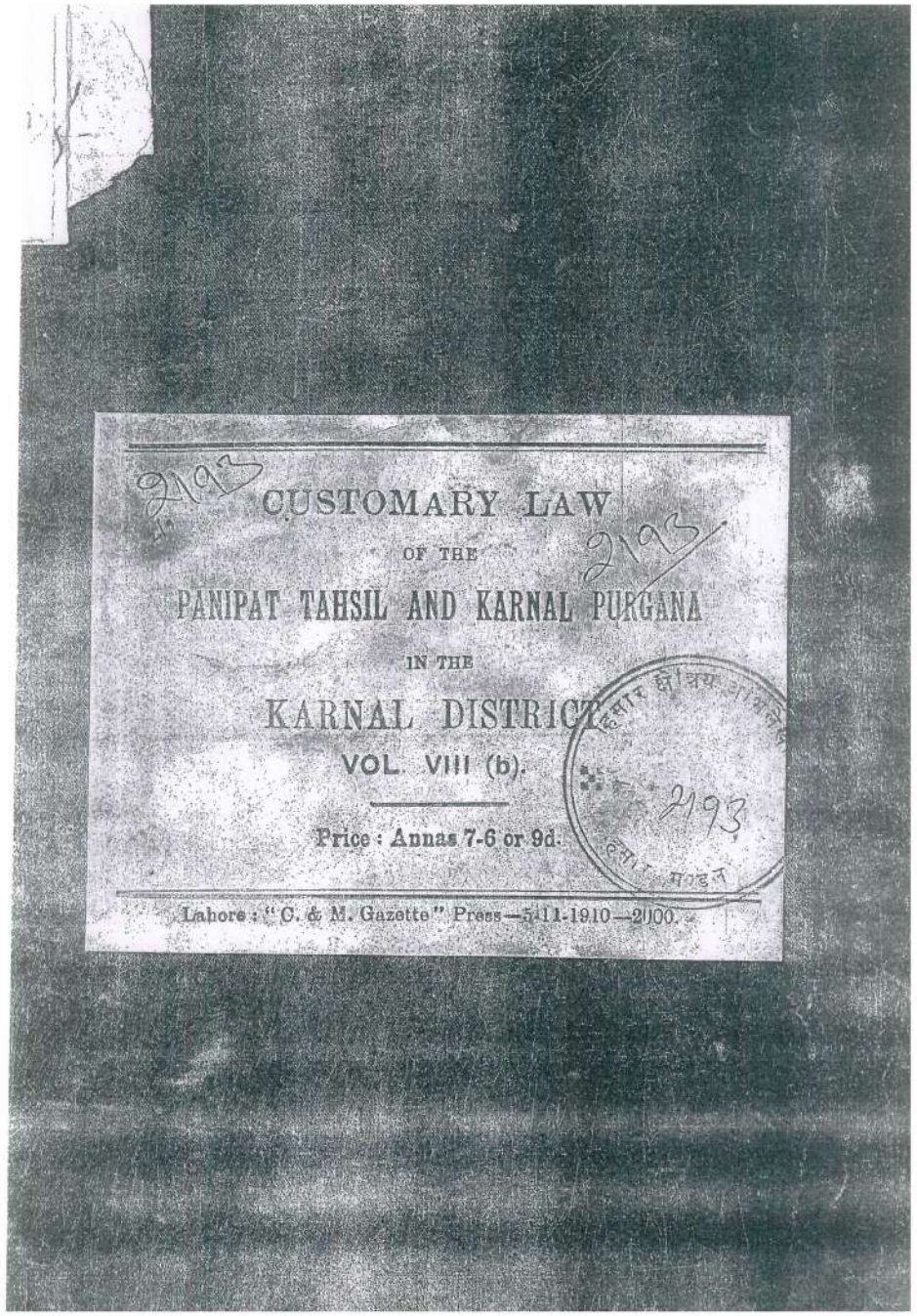


PREFACE.

This compilation deals with the customary law of tahsíl Pánipat and pargana Karnál, in the Karnal District. The questions are the questions asked at the Settlement of 1880, but arranged into chapters and sequence in accordance with the scheme adopted in Mr. Tupper's Customary Law of the Punjab. The answers represent faithfully the actual answers of the tribes, and great care has been taken that the questions should be thoroughly understood. All comment has been reserved for the notes and illustrations. As, however, it is the practice of the Courts to place greater reliance on those answers recorded in the *riwáj-i-ám* which are borne out by instances, illustrations, generally supporting but sometimes at variance with the answers, have been obtained to some extent from cases decided in the Chief Court, but more especially by searching the mutation records, and the record rooms of the District and Divisional Courts. For the notes on cases decided in the Divisional Court, I have to thank Mr. Clifford, Honorary Divisional Judge, Delhi, who not only selected the cases for me, with the permission of the Hon'ble Judges of the Chief Court, but has throughout given the benefit of his experience and advice.

It is believed that this is the first volume of this nature in which their proper value has been assigned to mutation proceedings as illustrating the actual customs of the people. For though it would seem that a series of undisputed mutations would be the best proof of any custom, Courts which have to adjudicate on points of custom, usually content themselves with recording oral evidence.

Special attention has been paid to the question of collateral succession by widows, the position of adopted sons and the exclusion of daughters from inheritance and it will be seen from a comparison of the Customary Law of Rohtak and Gurgaon, as given in Volume II of Mr. Tupper's Customary Law, that on these and other principal subjects the districts of the old Delhi territory follow approximately the same customs.

Dated 23rd May 1910. C. C. GARBETT.

LIST OF TRIBES.

1. RAJPUTS OF PANIPAT TOWN.
2. SAYEDS.
3. SHEIKHS.
4. MOGHALS.
5. AFGHANS.
6. JATS.
7. RAJPUTS.
8. GUJARS.
9. TAGAS.
10. BRAHMANS.
11. RORS.
12. BAIRAGIS.
13. KAMBOHS.
14. GOSAINS.
15. ARAINS.
16. MAHAJANS.

INTRODUCTION.

Sheikhs, Moghals, Afgháns and Mussulman Kambohs, with the exception of the custom noted in question 31, invariably follow the *shara*, and admit no customs. The word "all tribes" does not, therefore, include them and by Kamboh in the text is meant Hindu Kambohs only. The Sayads are bound by custom only in these few cases which are specially noted, in all other they also recognize only the *shara*.

The Rájpúts of Pánipat town in many cases differ both from one another and from the Rájpúts of the villages. These differences have been carefully noted. The expression "Rájpúts" without further definition has only been used to denote Rájpúts other than the Rájpúts of Pánipat town.

CHAPTER I.

BETROTHAL AND MARRIAGE.

QUESTION 1.—(*a*) *Within what Gots is marriage forbidden?*

(*b*) *What are the forbidden degrees of relationship?*

(*c*) *Is marriage lawful between persons living,*

(*i*) *in the same village,*

(*ii*) *in adjacent villages?*

ANSWER 1.—(*A*) *Mussulmans.*—

1. To all three parts of this question Arains and Rájpúts Got Chauhán in Karnal reply that they are bound only by the restrictions imposed by the Shara.
2. Rájpúts of Patti Kalyár, Pánipat Town, besides being bound by all restrictions imposed by the Shara are also forbidden by custom to marry either a maternal or paternal aunt.
3. Other Mussulman Rájpúts prohibit marriage within the Got but recognize no further restrictions.
4. Mussulman Gujars prohibit marriage within the Gots of the contracting parties and that of their maternal grandfather.

(*B*) *Hindus.*—

1. Among Játs marriage is forbidden,

(*a*) Within the Got of—

(*i*) the father,
(*ii*) the maternal grandfather.
(*iii*) the paternal grandmother.
(*iv*) of any resident of the village.

(*b*)

(*i*) between persons resident in the same village,
(*ii*) between persons resident in adjacent villages.

2. Bairagis, Gussains, Hindu Kambohs, Tagas of Pánipat and Rors, agree with the Játs as to (*a*) and (*b*) (*i*) but permit marriage between persons resident in adjacent villages.
3. Tagas of Karnal and Hindu Gujars agree with the Tagas of Pánipat except that they permit marriage within the Got of the paternal grandmothers (*a-iii*).

4. Other Brahmins follow the Tagas except for a local stipulation in Pánipat that those Brahmins who live in any one of the 27 adjoining villages belonging to Gujars may not intermarry.

These 27 villages are Pasina Kalán, Nurpur-Moghlan, Nurpur-Gujran, Haldana, Bhenwal Majri, Patti Kalyana, Narunda Dhinopur, Nariana Dhodpur, Diwáná, Gwalera, Wazirpur, Tatyana, of the Pánipat Tahsil, Chilkáná, Hirmajru, Qafarpur, Kheri, Bulandipur, Panchi, Naina Garhi, Motiwala, Barot Misronwal, Charsani, Bakarpur, Bibipur, Qutabpur, Chanda Ysaf and Bambhu of the Sonepat Tahsil, Delhi.

5. Among Hindu Rájpúts the following Gots do not intermarry:—Mandhair, Gandahair, Biodgujar, Saharwal and Behar. Otherwise regard is had not to the Got, but to the *thamba*, and within the *thamba* marriage is forbidden.

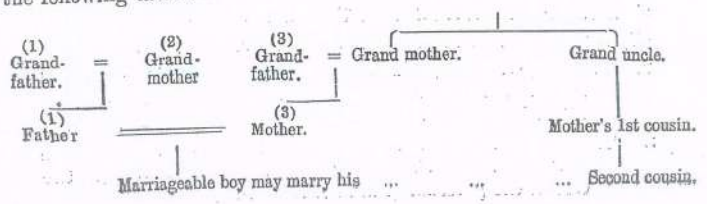
Note to Question 1.

(*a*) By "adjacent villages" is meant estates whose borders actually touch.

(*b*) It is remarkable that the Játs of Pargana Indri do not always observe the restriction *B.-b. ii*—forbidding marriage between persons in adjacent villages, several instances to the contrary being forthcoming including one of the marriage of a Ját of M. Kalsi to a Játni actually of the same village, though belonging to a different *patti*.

(*c*) A further restriction generally observed but not enforced as law is that the bride and bridegroom should be of the same degree, and a case occurred in Peoda, a village in the Kaithal Sub-division in 1908, which illustrates the general feeling on the subject. A Ját performed Karewa with the widow of his uncle and was ostracised by the village. He therefore alienated his ancestral land and settled elsewhere. The reversioners sued to set aside the alienation. The courts held that the ostracism of the defendant by plaintiff and all other members of the village constituted valid necessity for his leaving the village, and consequently for the alienation. It was also agreed that though generally repugnant to village morality the marriage in question was not illegal and was no justification of the extreme measures resorted to by the villagers. (Jaggu *v.* Hem Raj and Nand Ram, June 12th, 1908).

(*d*) The forbidden degrees of relationship are best illustrated by the following table:—



Thus the nearest relative whom a Ját may marry is ordinarily his second cousin on his mother's side. It is interesting to note that in the adjoining district of Rohtak the "four gots" within which marriage is forbidden are those of all four grand parents, that of the maternal grandmother being thus included. There is however a growing tendency, especially remarkable in the Gohana tahsil, to ignore this last restriction and it seems probable that in time the custom in Rohtak will be assimilated to the less conservative observances of Karnal.

(*e*) By *thamba* the Rájpúts mean a group of villages the inhabitants of which trace descent from a common ancestor, *e. g.*, in the Kaithal tahsil, Siwan and the group of villages surrounding it which were colonised from Siwan. In practice no Rájpút may marry a girl who can trace back to a common ancestor however remote.

QUESTION 2.—*May a man marry the daughter of his foster-mother ?*

ANSWER.—Mohammedans and Hindus agree that such a union is unlawful.

QUESTION 3.—*What rites are essential to a valid betrothal ?*

ANSWER.—(*a*) The Mussulman Rájpúts of Pánipat town consider a mere verbal promise between the contracting parties or their guardians sufficient to validate a betrothal.

(*b*) Arains state that the essence of a betrothal is the mutual consent of the guardians expressed by the mutual interchange of presents.

(*c*) Among Hindus the betrothal ceremonies of the Játs are the most elaborate and consist of two parts (1) *Rupna* and (2) *Tika Sagai*.

Rupna is performed by the placing of a rupee through the medium of the girl's family barber in the hand of the boy.

Tika Sagai is performed after *Rupna* and consists of the following ceremonies :—

(*i*). The mutual interchange of presents. Those sent from the girl to the boy are placed in the lap of the boy by a Brahman envoy from the house of the girl.

(*ii*). The *cashca*, a red line, is then drawn on the forehead of the boy by the Brahman.

(*iii*). Presents are made by the boy's family to the Brahman and to the family barber of the girl.

(*iv*). Sweetmeats are then distributed among the assembled guests.

The completion of either *Rupna* or *Tika Sagai* is sufficient to validate a betrothal.

Mussulman Játs celebrate both ceremonies but consider the *Rupna* as merely preliminary and it does not suffice to bind the parties. Most

essential is the cash present (*iii*) (*lág*) made at the *Tika Sagai* by the boy's people to the girl's envoys (*lágí*).

Bairagis consider the distribution of sweetmeats and the presentation of *lág*, Rors the presentation of *lág* only to be essential.

Hindu Rájpúts consider the *Rupna* to be the binding ceremony and state that a feast and the subsequent delivery of cash presents to the envoys of the girl by the family of the boy are the essential features.

Mussulman Rájpúts and Gújars observe a single ceremony wherein the boy is presented with a rupee, the *cashca* is drawn on his forehead, presents are given to the *lágí* and sweetmeats are distributed to the guests. Kambohs and Gossains omit the presentation of the rupee but otherwise adopt the same custom.

Tagas observe the same ceremony as the Gújars, but in addition thereto, require that on a previous occasion also and after the fashion of the *Rupna* of the Játs, a rupee be presented to the boy.

QUESTION 4.—*Whose consent is necessary to validate a betrothal ?*

ANSWER.—Kambohs and Arains follow Mahommedan Law.

With the exception of Gújars who state that in the second alternative the mother is entitled to arrange a betrothal unadvised, the remaining tribes agree that the responsibility of contracting betrothals for minors devolves upon,

1. The father and mother,
2. The brother, but with the consent of the mother,
3. The mother but with the consent of the paternal uncle,
4. The eldest brother,
5. The next of kin.

A boy who has come to the age of puberty may arrange for his marriage himself : but an unmarried girl cannot act without the consent of her guardians.

QUESTION 5.—*Can betrothal be dissolved on account of impotency, leprosy, total loss of sight, loss of one eye, insanity, immorality or loss of limbs ?*

ANSWER.—The Rájpúts of Pánipat town state that the dissolution of a betrothal depends entirely upon the will of the guardians who can for any sufficiently weighty reason and without ignominy, break off a match.

2. Játs, Gújars, Rors, and Bairagis state that impotency, leprosy, insanity, loss of limb, proved licentiousness on the part of the girl, and gross immorality on the part of the boy justify the breaking off of the match : but not partial or total loss of sight. The same custom prevails among all other tribes, except that the Mussulman Játs, Gossains, and

Hindu Kambohs consider total blindness, and the Rájpúts of Pargana Karnal partial blindness, a valid reason for dissolution, while Arains do not pay attention to licentiousness on the part of the boy.

QUESTION 6.—(*a*) *Should a boy or girl die after betrothal, can the survivor be betrothed again?*

(*b*) *In the event of the death of the boy has his brother any right to marry the surviving girl?*

(*c*) *If the girl die can the boy demand that the family of the girl provide him with a wife?*

ANSWER.—All tribes answer (*a*) in the affirmative and (*c*) in the negative.

Játs and Kambohs state in answer to (*b*) that a real brother of the deceased has a claim to the girl's hand. All other tribes agree that death dissolves the relationship with all its responsibilities.

QUESTION 7.—(*i*) *What castes recognize* Santh Sagai?

(*ii*) *What is the difference between* Santh Sagai *and* Dharm Sagai?

(*iii*) *If one betrothal in a* Santh Sagai *is dissolved are the connected betrothals, ipso facto, annulled or not?*

ANWSER.—(*i*) *Santh Sagai* is recognized by Játs, Gújars, Tagas, Brahmins, Baraigis, Kambohs, Rors, and Arains.

(*ii*) *Santh Sagai* is considered less honourable than *Dharm Sagai*, being indulged in with a view to the reduction of the expenses of the marriage ceremonies, and is arranged as follows:—If A, B, and C are three families, each containing an eligible daughter (D) and an eligible son (S) then

A D marries B S;
B D marries C S;
C D marries A S;

(*iii*) A completed wedding ceremony is not affected by the dissolution of a connected betrothal, but mere betrothal may be dissolved. Arains, however, add that if a betrothal be dissolved by the death of the girl and her family provide a substitute, the connected unions cannot be broken.

Note to Question 7.

Occasionally among Játs, but more frequently among Rors inter marriage in two families only takes place, the son of one family marrying the daughter of the other in consideration of the daughter in the first family being accepted as a bride in the second. This is called *Atta Satta*. *Santh Sagai*, as described in the text, is known as *Tiggadda* and as *Chaugadda* when, as sometimes happens, a fourth family comes in. The more families there are the less dishonourable is the relation.

QUESTION 8.—*What are the essential rights in the marriage ceremony?*

ANSWER.—All Mohammedan tribes conform to the Shara. Hindus recognize two forms of marriage. The essential features of the ordinary *shadi* are the giving away of the bride to the bridegroom by the family Brahman (*kanya dan*), followed by the seven fold circling (*phera*) of the sacred fire (*havan*).

When for some cogent reason, such as poverty or disgrace, this public ceremony is unsuitable, *jhar phunki phera* is performed by repairing to the jungle and circling seven times round a fired bush.

QUESTION 9.—(*a*) *Does the custom of—*

(*i*) *Neota*
(*ii*) *Bhat*
(*iii*) *Bail*

} *exist?*

(*b*) *Can any of these forms of wedding gifts be recovered as a debt?*

(*c*) *Are they given at Karewa?*

ANSWER.—Rájpúts of Patti Kalyar admit all three customs: other Rájpúts of Pánipat town admit that of *Bhat* and *Bail* only. All other tribes admit the custom of *Neota* and *Bhat* only.

With the exception of those of Patti Kalyar, the Rájpúts of Pánipat town, in contradistinction from all other tribes, cannot recover "*Neota*" as a debt. *Bhat* and *Bail* are never so recoverable.

These gifts are never compulsory at Karewa.

Note to Question 9.

Neota.—Is a cash present made, as the result of special agreement on the occasion of the wedding of a member of family A by the members of family B. When a wedding takes place in family B, family A are bound to make a similar present.

Bhat.—Is a present of personal property made by the mothers' brother on the occasion of the marriage of his nephew or niece.

Bail.—A cash present varying from one pice to one rupee paid to the dancing girls by the guests at a wedding.

QUESTION 10.—*Under what circumstances can a man marry a second during the lifetime of his first wife?*

ANSWER.—Mussulman Rájpúts, Arains, and all Sayeds excepting those who live in Baras and Panauri follow the Shara: but the Sayeds of these latter villages together with the Mussulman Rájpúts of Pánipat town while admitting the license given by the Shara, state that customary law forbids a man to marry a second wife unless his first wife fails to give birth to male issue.

Játs, Hindu Rájpúts, Gujars, Tagas, Rors, and Hindu Kambohs recognize no restrictions, but Brahmins, Bairagis, and Gossains object to a second marriage except for special reasons, such as ill health, barrenness, or blindness.

QUESTION 11.—*May a widow marry again ?*

At such a marriage what rites are performed ?

ANSWER.—The remarriage of widows is forbidden only by Rájpúts, Hindu and Mussulman with the exception of the Mussulman Rájpúts of Karnal pargana, Tagas and Brahmins. Other Mussulmans follow the Shara. Other Hindu tribes state that to render such a marriage valid the bridegroom must robe the bride in a red cloth (*chaddar andazi*) and present her with bracelets or other jewelry in the presence of their relatives : but when she is the widow of a deceased brother Bairagis and Gossains agree that marriage is contracted by the mere entry as wife into her brother-in-law's house.

Note to Question 11.

(*a*) The bracelets presented at Karewa are usually of glass, those of silver being considered to be of ill omen.

(*b*) The statements of Jats and other leading Hindu tribes to the effect that in all cases of remarriage some sort of ceremony is necessary is contrary to the general custom of the province which is identical with that professed by the Bairagis and Gossains of this tract—*vide* Rattigan's Digest of Customary Law, paragraph 75. But although the Játs will not admit that they recognize as licit the union of the widow of a deceased proprietor with her 'dewar' without the performance of some ceremonies, the fact that that the children of such a union admittedly inherit—*vide* question 25, Chapter III, *infra* tends to prove the contrary.

The general practice is that when a deliberate match is made between the parties, the ceremony of *chaddar andazi* is performed : and both public morality and private convenience would require that this should always be the case. The right of the widow to the ancestral estate of her deceased husband is definitely extinguished : and tangible proof of the Karewa is obtained. If, however, the woman becomes pregnant illicitly the surviving brother for the sake of his own good name often gives her the protection of his house (*ghar dalna*), claims her as his wife, and treats the child as though true born.

Illustration 1.—Rors of Sikri.

Mussammat, Sarupi, widow of Shahzada, being found to be pregnant, was married without ceremony to Chet Ram, brother of her deceased husband.

Illustrations 2.—Játs of Karnal.

The daughter-in-law of one Rája, of Begampur, was similarly married to Nanak, son of Jaya Ram.

Illustration 3.—Gujars of Sandholi.

Hari Ram, lambardár, married the widow of his deceased brother in a similar manner.

Though illustrations 1 and 3 are taken from villages not of this tract, they are in the district and the custom seems to exist as a general one.

(*c*) It is remarkable that the Rájpúts of this tract with the exception of the Mussulman Rájpúts of Pargana Karnal continue to forbid the remarriage of widows, a practice which is now admitted in Pargana Indri and Thanesar—*vide* correction slip No. 1 to Volume X, Punjab Customary Law.

Remarriage in the Karnal Pargana is illustrated by mutation No. 413, dated 7th December 1908, M. Balu, one Mussammat Marayam, a Rájpútáni, losing her title to her land on remarriage.

QUESTION 12.—*When a widow desires to marry again,*

What interval must elapse between the death of her first husband and her marriage with the second ?

ANSWER.—The Rájpúts of Pánipat town and tahsil, and Hindu Rájpúts of Karnal, the Sheikhs of Budha Khera and of Pargana Karnál, Tagas and Brahmins forbid remarriage. Gújars, Hindu Játs, Rors, Bairagis, and Gossains state one year to be the minimum period of widowhood. Mussulman Rájpúts of Karnal, Mussulman Játs, and Arains state that a pregnant widow may not remarry till after childbirth otherwise the ordinary period of Iddat, 4 months and 10 days only need be observed. All other tribes follow the Shara.

QUESTION 13.—*Can an illegitimate child be legitimatized ?*

ANSWER.—All tribes agree that he cannot.

Note.—But see Mandal case Lalli Begam v. Azmat Ali No. 13 P. R. of 1875, paragraph 7 of Appendix A of Karnal Settlement Report, *vide* Chapter 3, question 25.

CHAPTER II.

DIVORCE.

QUESTION 14.—*On what grounds can a wife be divorced?*

ANSWER.—Mussulman Rájpúts of Pánipat town state that divorce is forbidden by custom: all other Mohammedans follow the Shara. All Hindu tribes while denying the practice of formal divorce state that:—

(*a*) A husband is justified in abandoning connubial relations with a faithless wife.

(*b*) If a wife leaves the shelter of her husband's home he can refuse to receive her back.

Further, all Hindus state that should either husband or wife become a pervert the union becomes *ipso facto* dissolved, the pervert being considered as one dead.

Note to question 14.—According to the Shara if a wife deny the creed of Islam, the marriage is annulled, and the courts enforce this provision of Mohammedan Law. The Hindus claim to have a parallel custom: but no instance has been traced of a Hindu woman ever having been divorced on this plea.

QUESTION 15.—(*i*) *In case of divorce has a wife any claim, other than for the payment of her dower* (*Mahar*) *upon her husband?*

(*ii*) *If the divorce is occasioned by immorality or desertion upon the part of the wife, are her rights affected?*

ANSWER.—No Hindu tribe recognizes the custom of divorce. The Mussulman Rájpúts of Pánipat town do not admit it. Mussulman Játs pay the dower, and the dower only, whether the divorce be due to the fault of the wife or not: Mussulman Rájpúts state that should a divorce be occasioned by the misconduct of the wife she would lose her right to dower. They deny, however, that such a case has ever arisen.

In no case has a divorced wife a right to maintenance.

Note to question 15.—In villages divorce is most unusual, and payment of dower more unusual still, but when demanded Rs. 32, the minimum sum fixed by the Shara, is usually paid. Certain Sayed and Rájpút families, however, tend to fix an excessive dower in order to maintain the dignity of their family, and dower so promised is not infrequently exacted. If the husband die without issue the widow's claim to dower sometimes enables her to maintain the estate against the collaterals even where Mohammedan Law is followed, *vide* Civil Appeal No. 184 of 1897.

CHAPTER III.

INHERITANCE.

QUESTION 16.—*What are the rules of succession to property which is*

(*a*) *Ancestral,*

(*b*) *Acquired?*

ANSWER.—1. (*a*) Among Rájpúts of Pánipat town, excepting Patti Kalyar, in both cases:—

(*i*) Issue male.

(*ii*) Widow.

(*iii*) Widows of sons and grandsons.

(*iv*) Daughters, provided they be married in Pánipat.

(*v*) Father.

(*vi*) Brother.

(*vii*) Issue of brother, male, and female if married in Pánipat.

(*viii*) Paternal cousins or their offspring.

(*ix*) Paternal grandfather or his next of kin according to the genealogical table.

2. Rájpúts of Kalyar, as above but omitting (iv). Among them daughters cannot inherit.

3. Sayeds of Barsat and Jalpahar follow the Shara except that among the Sayeds of Jalpahar a daughter cannot inherit. Oher Sayeds follow Rájpúts as above except for the proviso in No. (iv).

4. Among Játs, Rájpúts, Gújars, Tagas, Brahmans, Rors, Kambohs, Bairágis and Gossáins of the Bandi tribe, succession is as follows:—

a.—To ancestral estate.

1. Issue male.
2. Widow, or widow and son's widow in equal shares.
3. Brother, or issue male of brother.
4. Next of kin in the male line of succession.

b.—To acquired estate.

1. Issue male.
2. Widow and son's widow in equal shares.
3. Father.
4. Brother, or issue male of brother.
5. Next of kin in the male line of succession.

Gossáins and Bairágis of the Nadi tribe are not agriculturists: and follow the rules of their order.

Notes to question 16.

I—Rájpúts of Pánipat town.

(I *vii*).

The *Mirásis* of Faridpur and Pánipat, however, though governed by custom, have been held to follow a different rule, daughters succeeding only in the absence of sons and brother's sons: a custom which appears to be without parallel, *vide* Civil Appeal P. R. No. 99 of 1902. Mussammat Rahiman and Allah Banda *versus* Ghulám Hussain and others of Faridpur.

II.—Sayeds.

(3.—" Other Sayeds, &c.")

In the case of Sayeds of Faridpur the *riwáj-i-ám* has been followed.

Illustration No. 1.—Sayeds of Faridpur.

APPEAL No. 369 OF 1893.

Mussammat Hashnasun Nisa versus *Mussammat Najaf-un-Nisa and others.*

Sayeds of Faridpur—Custom—Daughter not entitled to succeed in presence of mother.

The parties were Sayeds of Faridpur, tahsil Karnal. Plaintiff as daughter claimed her share according to Mohammedan Law. It was found that the parties were governed by custom, and that the plaintiff was not entitled to succeed in the presence of her mother though she might be entitled to succeed on her mother's death.

But, per contra, Sayeds of Mauza Panauri and of Karnal town have been found to follow the Shara.

Illustration No. 2.—Jafir Ali and Wazir Ali *versus* Ghulám Ali.

Sayeds of Panauri—Mohammaden Law.

This suit related to land in mauza Panauri, in tahsil Karnal. The parties were Sayeds, plaintiffs being Sunis, and defendant a Shia, both residing in Panauri. It was admitted that the parties followed Mohammaden Law.

Illustration No. 3.—Sayeds of Karnal.

CIVIL APPEAL No. 184 OF 1897.

Sayed Khadam Ali, plaintiff, versus *Mussammat Muniran, deendant.*

Sayeds of Karnal—Mohammedan Law.

The parties were Sayeds of Karnal. They were in no sense agriculturists but were living in the town of Karnal, owning house property there and holding *Muafi* lands round about. The plaintiff sued to

recover on the ground that the defendant had remarried a *ghair-shakhs* of Pánipat and forfeited her estate. It was found that the defendant succeeded to her husband's estate in lieu of her share of unpaid dower, that the parties followed Mohammedan Law, and that no custom was proved divesting the widow of the estate she had inherited and taken in lieu of dower.

III.—Sheikhs.—Sheikhs as stated in the introduction, are governed by the Shara.

Illustration—Sheikhs of Pánipat.

APPEAL No. 256 OF 1868.

Mussammat Amarsul Abbas versus *Mussammat Ummal Hassan.*

Pánipat Sheikhs—Mohammedan Law.

This suit related to the house and land of Muhammad Hussain and the offerings he received at the shrine of Qalandar Sahib at Pánipat.

The parties were the wife, sister, daughter, and daughter's daughter of the deceased. It was admitted by all parties that they were governed by Mohammedan Law.

IV.—The succession of widows.—(4. A. 2.— " Widow, and son's widow " failing issue male).

PROPOSITION 1.—The widow succeeds to all her husband's property, divided or undivided.

Illustration No. 1.—Brahmins of Karnal.

APPEAL No. 348 OF 1900.

Mussammat Durgi versus *Shibbu.*

Brahmins of Karnal—Succession of widow to share in joint holding.

The parties were agricultural Brahmins of Karnal, and plaintiff, a widow, claimed separate possession of her share in the joint holding. The defendant denied a right to possession on the ground that she was being given a share in the profits for maintenance. The Lower Court dismissed the suit. On appeal the Divisional Judge considered the plaintiff was entitled to separate possession on the ground that defendant was causing her trouble and would not give her share of produce.

Illustration No. 2.—Brahmins of Karnal.

APPEAL No. 139 OF 1891.

Mussammat Mahadevi versus *Girdhari.*

Brahmins of Karnal—Succession of widow.

The parties were agricultural Brahmins of Karnál, and plaintiff claimed her deceased husband's share in land as against her husband's brother. The first Court dismissed the suit on 6th February 1891. The

Divisional Judge on appeal on the question of custom gave judgment as follows :—

"The parties are agricultural Brahmins and five instances have been adduced from the revenue records in which the widows of agricultural Brahmins in Karnal have succeeded to their husband's estate instead of to a mere maintenance." The Divisional Judge accordingly decreed the plaintiff's claim on 16th July 1891.

PROPOSITION 2.—A widow succeeds collaterally to property to which her husband would have succeeded had he survived.

Illustration No. 1.—Jats of Kaith (Pánipat Tahsil).

APPEAL No. 169 of 1901.

Mussammat Sundo versus *Singh Ram and others.*

Játs of mauza Kaith—Collateral succession of widow.

The parties were Játs of mauza Kaith, tahsil Pánipat. One of the questions involved was whether a widow succeeded collaterally or not. The suit was dismissed by the first Court on the ground that defendants were entitled to succeed under the pedigree table presented by them. On appeal the Divisional Court on 8th June 1901 gave judgment as follows :—

"The land in suit formed part of the estate of Mamraj deceased, and was held by his widow Mussammat Man Kaur. The present plaintiff and defendants jointly sued Mussammat Man Kaur to recover the entire land alleging that she had remarried. With their plaint they filed a copy of the Settlement pedigree, under which present plaintiff was really entitled to the whole, if widows succeed collaterally. They obtained a decree, and after that possession, and therefore a partition took place, present plaintiff getting one half and defendants one half. This occurred in 1898."

"The present suit was instituted in July 1900, plaintiff claiming to recover the other half from her original co-plaintiffs in 1898 and now defendants. Five of the defendants denied her right to succeed collaterally and also set up a pedigree table, by which if entitled to succeed collaterally she could only succeed to half."

"The Lower Court fixed the following issue :—Is the plaintiff Mussammat Sundo more nearly related to Mamraj whose land is in suit, as compared with the defendants, and is she for that reason entitled to the whole of it by law and custom?"

"The Lower Court found for the pedigree table presented by the defendants and dismissed the suit. It appears to me that the suit may be disposed of on the ground that the plaintiff is estopped from contesting what occurred in 1898 and now claiming the whole. It is clear that she then admitted the right of the defendants to succeed jointly with her, and if she had not, they might and possibly would

have contested her right to succeed collaterally at all as a widow, in which case she might have lost everything. What occurred in 1898 may be looked upon as a compromise of a doubtful right, and this ground cannot now be disturbed."

"Upon the above ground I maintain the dismissal of the suit—not on the ground that the pedigree table presented by defendants is proved."

The case is an interesting illustration of the confusion that has existed concerning the rights of widows, but the effect of the judgment is to show that in the suit brought in 1898 the widow Mussammat Sundo did succeed collaterally though not to the full extent of the interests which she might have claimed.

Illustration No. 2.—Rors of Budhanpurabad.

On the death of Uda, son of Kesar, without issue, the inheritance devolved upon his collaterals who included Mussammat Nanu, widow of Sarni, and Mussammat Nanni, widow of Kundan, *vide* Mutation No. 9, dated 1st June 1909.

Illustration No. 3.—Rájpúts of Nisang.

On the death of Jiha, without issue, his property devolved on Umra, his younger brother, a half share, and on Mussammat Nisa, widow, and Ahmad and Mohammad, sons by another wife, as the representative of Hussaina, the elder brother deceased, a half share, *vide* Mutation No. 790, dated 22nd March 1907. This family is governed by Chundavand, *vide* Mutation No. 51, dated 10th June 1891.

Illustration No. 4.—Játs of Kheri Sheripur.

Among the collaterals who succeeded to the property of Mussammat Sargatai was Mussammat Mirtu, widow of Randya, *vide* Mutation No. 224, dated 26th October 1907.

Illustration No. 5.—Játs of Biwana Lakhu.

The collaterals succeeding to one Meon included Mussammat Harnandi, a widow, *vide* Mutation No. 671, dated 11th May 1906. Further illustrations are afforded by mutations :—

No. 147 of 1904—Játs of Sheikhpur.
No. 340 of 1907—Rájpúts of Balu.
No. 66 of 1890—Rájpúts of Sambli.

Although not an agricultural tribe the Mahajans of Gharaunda have been found to follow the same custom.

Illustration No. 9.

APPEAL No. 168 of 1908.

Shankar Das versus *Mussammat Shibbi and Charangi Lal.*

Mahajans of Gharaunda—Chundavand—Collateral succession of widow.

The parties were Mahajans of mauza Gharaunda, tahsil Karnal, and the suit related to land. It was found that the family followed *chundavand*, and that widows were entitled to succeed collaterally. The suit was accordingly dismissed on 17th January 1908

and the plaintiff's appeal was dismissed by the Additional Divisional Judge on the 25th March 1908.

PROPOSITION 3.—In families which observe *chundavand* and in some tribes, *vide* question 21, Chapter III, a sonless widow shares equally with the issue of the second wife : an exception to the rule that issue male has precedence.

Illustration No. 1.—Rájpúts of Nisang.

The parties were related as follows :—

AMAR ALI.

Jiha. Umra.

Mst. Fezan=Hossaina=Mst. Nisa.

Ahmad. Mohammad.

Hossain predeceased Amar Ali. On the death of Amar Ali the share of Hossaina was divided equally between Mussammat Nisa on the one hand and Ahmad and Mohammad on the other, *vide* Mutation No. 51, dated 10th June 1891.

Illustration No. 2.—Ját Sikhs of Rai Mazra, Thanesar.

REVENUE APPEAL No. 8 OF 1909 IN THE COURT OF THE SETTLEMENT OFFICER, KARNAL.

It was found that in this district the sonless widow generally takes a full share and not merely maintenance.

The right of a widow as against her mother-in-law.

PROPOSITION 4.—A widow can succeed to the estate of her deceased husband as against the mother of her husband only in the presence of a brother-in-law, or issue male of such brother-in-law. Otherwise the two widows take in equal shares.

The principle underlying the alternative in 4. A. 2 seems to be that when the brothers are alive the mother is entitled to maintenance from the estate which her husband held and which is divided among her sons. If then one son die this right is not affected, and the widow in default of issue represents her husband. If however there be no brother, both widows, that of the last proprietor and that of the last proprietor but one have an equal claim to the land. But though this appears to be the principle, the rule seems to be broken almost as frequently as it is observed : and owing to the contradictions in the answers recorded on this subject at last Settlement, and repeated at the attestation of the Extra Assistant Settlement Officer in revision, the leading tribesmen were summoned before the Officiating Settlement Officer and the questions were fully explained to them with the result that the answers now recorded were given unanimously. The following concrete

example also was set before them and they were again unanimous in their reply. The example refers to self-acquired property only.

MUSSAMMAT A.

B. = Mussammat D.

E. = Mussammat F.

E predeceases B.

(*i*) If A. B. D. F. are left ; A. and F. take in equal shares.
(*ii*) If A. B. and F. only are left ; A. and F. take in equal shares.
(*iii*) If B. and F. only are left ; F. only takes.
(*iv*) If A. only is left the collaterals take.

But instances of the exclusion of her mother-in-law by the widow in the absence of brothers-in-law are not infrequent, *e. g.* :

Illustration No. 1.—Rájpúts of Jamálpur.

The parties were related as follows :—

Daya = Mussammat Kanwardia.

Nirmal = Mussammat Chaoli.

On the death of Nirmal, his widow Mussammat Chaoli, succeeded excluding his mother Mussammat Kanwardia, *vide* Mutation No. 155, dated 9th January 1904.

Illustration No. 2.—Rájputs of Jamálpur.

Mussammat Choli, widow of Jhandu, son of Shiv Ram, succeeded in preference to Mussammat Seju, mother of Jhandu, *vide* Mutation No. 152, dated 11th February 1903 : *vide* also Mutation No. 25, dated 11th June 1901, and No. 436, dated 19th February 1907, for Bairágis of Goli.

PROPOSITION 5.—But mothers, grandmothers, and great-grand mothers, etc., share equally.

Illustration No. 1.—Brahmins of Sambalka.

The parties were related as follows :—

Tulsi Ram = Mussammat Har Kaur.

Harde Ram = Mussammat Nand Kaur.

Abhe Ram = Mussammat Sudhi.

Molar (died unmarried).

On the death of Molar, mutation would have taken place in the name of Mussammats Har Kaur, Nand Kaur and Sudhi had not the former waived her right. Mussammat Nand Kaur and Mussammat Sudhi thereon succeeded in equal shares, *vide* Mutation No. 1, dated 22nd October 1907.

PROPOSITION 6.—The widow of a son who has died before inheriting, excludes brothers and is on exactly the same footing as the widow of a proprietor.

Illustration No. 1.—Brahmins of Karnal.

Appeal No. 139 of 1891 (quoted as illustration 2 to proposition 1.)

Illustration 2.—Rájpúts of Balu.

The parties were related thus :—

Makhmula = Mussammat Kariman.

Abdul Ghafur = Mussammat Maryam.

Abdul Ghafur predeceased his father and on the death of the latter Mussammat Kariman and Mussammat Maryam succeeded in equal shares, *vide* mutation No. 213, dated 27th September 1903.

Illustration 3.—Játs of Machraoli.

Khata No. 44 of Mr. Douie's Settlement records that one Tjeu was succeeded by his widow and son's widow in equal share.

Sometimes, however, usually by mutual arrangements, the widow takes precedence.

Illustration 4.—Játs of Ráipur.

One Badama died leaving a widow Mussammat Lachmi and a son's widow Mussammat Niháli. Mussammat Lachmi succeeded, but forfeited her rights by *karewa*, and the property passed to Mussammat Niháli, *vide* mutation No. 122, dated 21st May 1904.

Illustration 5.—Játs of Shahpur.

Parties were related as follows :—

Ude Rám.

Hans Rám = Mussammat Bholi.

Sís Rám = (X).

Thamba (posthumous).

The name of Sís Rám's widow is not recorded. Sis Rám died shortly before Hans Rám, leaving a pregnant widow. Hans Rám then died. Mutation was effected in the name of Mussammat Bholi, but on the birth of a son to Sís Rám, the property went to him, *vide* mutation No. 790, dated 23rd March 1908.

PROPOSITION 7.—Collaterals succeed in preference to a widowed mother-in-law unsupported by a daughter-in-law, *vide* note to proposition 5.

V.—"In the male line of succession" (4 A. 4.)

PROPOSITION I.—Daughter's sons are excluded.

Illustration 1.—Játs of Asrana.

CIVIL APPEAL No. 344 OF 1896.

Bhag Mal, &c., plaintiffs versus *Nathu, &c., defendants.*

Játs of Asrána—Daughter's son not entitled to succeed collaterally.

The parties were Játs of mauza Asrána, tahsil Pánipat. The plaintiffs were distant collaterals, while the defendants were nearer but related through a daughter. It was found in both Courts that daughter's sons were not entitled to succeed collaterally.

PROPOSITION II.—Collaterals by blood exclude persons living in the same *thula*.

Illustration 1.—Rájpúts of Nisang.

APPEAL No. 544 OF 1896.

Hosena, &c., plaintiffs, versus *Imam Ali, &c., defendants.*

Rájpúts of Nisang.

The parties were Rájpúts of mauza Nisang, tahsil Karnal. The estate in dispute was that of Manohar deceased. The plaintiffs were more nearly related to the deceased than the defendants, but their right to succeed was not disputed on this ground. The defendants set up a custom entitling them to exclude plaintiffs, because defendants were co-sharers in the *thula* in which the land is situate, while plaintiffs were not. The first Court found the custom not proved and decreed the plaintiffs' claim on 18th August 1896. This order was upheld on appeal by the Divisional Judge on 22nd January 1897, and was further upheld in the Chief Court, *vide* Chief Court Civil Appeal No. 642 of 1897.

QUESTION 17.—*Can an adopted son succeed collaterally ?*

ANSWER.—*All tribes agree that he can.*

Note.—This question was not asked at last Settlement. All tribes, however, are emphatic in their answer, and it is clear that with the single exception of the Rájpúts of Pánipat town, in this district as elsewhere in the Delhi territory but in contradistinction from the practice of appointment of an heir prevailing in the Central Punjab, an adopted son is considered as being severed entirely from his natural family and invested with all the rights and titles of a natural son in his adopted family.

Illustration 1.—Rájpúts of Balu.

Vide mutation No. 331, dated 7th June 1902.

Illustration 2.—Kambohs (of Kambohpura).

Vide mutation No. 1752, dated 15th February 1903.

Illustration 3.—Bairágis of Sambli.

Vide mutation No. 1701 dated 3rd August 1906.

Illustration 4.—Brahmins of Baholi.

Vide mutation No. 893, dated 16th January 1905.

Illustration 5.—Játs of Paoti.

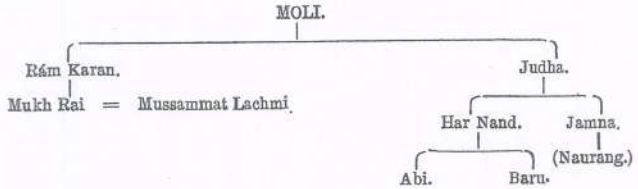
Vide mutation No. 171, dated 7th June 1903.

Illustration 6.—Játs of Mahaoti.

Vide mutation No. 459, dated 23rd January 1902.

One instance and one only to the contrary has been traced.

The parties were Játs of Mauza Atta and were related as follows:—



Naurang was the adopted son of Jamna. The property of Mussammat Lachmi was divided between Abi and Baru only, *vide* mutation No. 825, dated 29th May 1906.

QUESTION 18.—(*a*) *Under what circumstances can a daughter inherit?*

(*b*) *What are the rights of an unmarried daughter upon the death of her father?*

ANSWER.—(*a*) A Rájpútni of Pánipat, married in Pánipat town and not being a member of Patti Kalyar, inherits in default of issue male. Among the Sayeds of Baras, Panauri, Faridpur, and Sayedpura also, daughters inherit in default of male issue. In Jalpahár a daughter cannot inherit, but other Sayeds follow the Shara. In no other tribe can a daughter succeed.

(*b*) Among Bairágis the estate does not devolve upon the next-of-kin until the girl has been suitably married and the wedding expenses defrayed. All other tribes, together with the Sayeds of Baras, Panauri, Faridpur, Jalpahár and Sayadpura state that the girl is entitled to maintenance from the estate until she has been married.

Note to Question 18.

Succession of daughters.—The Customary Law in Rohtak and Gurgaon agrees with the opinion of the leading tribesmen of Karnal pargana and Pánipat tahsil, recorded at last Settlement and affirmed unchanged on revision, to the effect that under no circumstances whatever is a daughter entitled to succeed to an estate. Any male, no matter how distant, is considered by the zamíndárs of this tract, and it would seem therefore of the entire Dehli territory, to be entitled before the daughters of the last proprietor. It is as if land were a heritage altogether too precious to be entrusted to the inexperienced

hands of an unmarried, and therefore very young girl. Widows who have had experience in their husband's life-time, can be trusted but never a daughter. But if the security of the land were the original motive, the principle has been extended so that not even succession of the male through a female is admitted.

Illustration 1.—Brahmins of Noltha.

APPEAL No. 58 OF 1891.

Rámji and another versus *Munshi, minor.*

Brahmin of Noltha —Succession of sister's sons.

The parties were Brahmins and the suit related to land in mauza Noltha, tahsil Pánipat, belonging to Shib Lál deceased. The plaintiffs claimed as collaterals, while defendants claimed as adopted son and as a sister's son. The first court dismissed the suit. The Divisional Judge on appeal found the adoption not proved and as to custom recorded as follows:—

"No plea was raised in the Lower Court that plaintiffs were too distantly related to inherit, but merely that defendant as a sister's son was the preferential heir and no custom allowing inheritance by a sister's son was proved."

The appeal was accordingly dismissed.

The following judgment of the Chief Court, however, is contrary to the *riwáj-i-ám*:—

Illustration 2.—Jats of Mahaoti.

APPEAL No. 294 OF 1898.

Jowahra and Desráj versus *Mussammat Masi.*

Játs of Mahaoti. Succession of daughter against distant collaterals.

The parties were Játs of mauza Mahaoti, tahsil Pánipat. The plaintiffs were distant collaterals of Tulso, deceased, and claimed possession as against his widow on the grounds that she had forfeited her life estate by reason of misconduct. The Divisional Judge found that the *riwáj-i-ám* of Tahsil Pánipat was clear that misconduct entailed forfeiture, and was of opinion that no evidence worth the name had been given to rebut the custom as recorded in the *riwáj-i-ám*.

It further appeared that Tulso left a daughter and the Divisional Judge held that although a daughter would be entitled to maintenance, she would not be entitled to succeed. The Divisional Judge accordingly on 10th June 1898, accepted the appeal and decreed the plaintiff's claim, thereby reversing the order of the Additional District Judge, dated 13th April 1898. On further appeal to the Chief Court, it was held by Robertson, J., in a judgment delivered on 13th August 1900 that plaintiffs, who were distant collaterals, at the very nearest not within 7 or 8 degrees of the deceased, were not entitled in the presence of an unmarried daughter, but that she was entitled to hold

till death or marriage whichever first occurred. The material portion of the judgment of the Chief Court is as follows :—

"Of the entries relied on in the *riwáj-i-ám*, Section 23 (Section 16 of the present volume) does not appear to contemplate a case of this kind, and Section 71 (Section 18 of the present volume) is unsupported by any instances. Though we do not take the extreme view that an entry in a *riwáj-i-ám* is of no value without instances quoted, its value is certainly very much diminished by that omission and taking it by itself its value in this case is not great. No doubt when there are very near collaterals, such as brothers, nephews, first cousins, and the like, the interest of a minor daughter can be fairly trusted to them, and it would be possible in accordance with the custom and with native opinion that the daughter should not assert her rights in this form, and that near collaterals should take over the inheritance, and administer it, arranging for the girls' suitable maintenance, and her marriage, and so on. But the case is far otherwise when the persons claiming are distant collaterals with no special interest in or near connection with the young girl, and recent decisions have frequently been in favour of extending to a daughter in these circumstances the same estate as a widow holds until marriage or death, and these views appear to us to be entirely in accord with the best native opinion on the subject, and with established custom. The instances quoted in this case against the custom are all those in which near collaterals took over the management of the estate and they are as a matter of fact not thoroughly proved." See Chief Court Civil Appeal No. 1263 of 1898.

It will be seen that in the above judgment the learned Judge has refused to attach weight to the custom recorded in the *riwáj-i-ám* on the ground that the section in point is not supported by instances. It is, however, submitted firstly that the recorded opinions in the *riwáj-i-ám* should be sufficient to shift the burden of proof upon the other side, and that as the other side had apparently been unable to cite a single instance of the succession of daughters, the recorded custom should have been followed; and secondly that to demand that a negative custom be supported by instances is somewhat unusual. Custom is alleged to say that daughters do not succeed : if custom is wrong it would surely not be difficult to quote instances to the contrary : but if custom is right then the revenue records which are the treasure house of instances will be silent. For daughters being by custom ignored, will not be mentioned.

During the present revision special search has been made for any entries which might support the judgment already quoted, with the result that the only other decided cases in which succession to daughters was decreed were found to be based on Hindu Law and not on custom, while mutation proceedings among which not a single satisfactory instance of such succession has been found strongly support the *riwáj-i-ám*.

The following are all the remaining instances bearing on the point which it has been possible to discover. The first four clearly support the recorded opinions.

Illustration (*i*).—Sheikhs of Pánipat.

APPEAL No. 90 OF 1890.

Mussammat Aziman and others, Plaintiffs, versus *Bahuddin and others, defendants.*

Sheikhs of Pánipat—Succession of daughters contrary to custom.

Plaintiffs as daughters claimed a half share in a house at Pánipat. They claimed to be Sheikhs Siddiqis and to follow Mohammedan Law. The decree-holder who had attached their brother's right in the house pleaded that they were Arains and followed custom. The parties were not agriculturists. The Divisional Judge considered on the evidence the family to be a Sheikh family, though not Siddiqis, and he considered it proved that succession in the family was not according to Mohammedan Law. He accordingly dismissed the plaintiffs' appeal, upholding the order of the Lower Court.

Illustration (*ii*).—Bairágis of mauza Bhandari, in tahsil Pánipat.

APPEAL No. 145 OF 1905.

Sri Chand and another versus *Mussammat Phulan.*

Bairágis of Bhandari—Daughter admittedly excluded by collaterals.

The land in dispute belonged to Harnám who was succeeded by his widow. On the death of the widow the Settlement officials after enquiry sanctioned mutation in favour of the daughter Mussammat Phulan. The plaintiffs claimed to recover possession under a pedigree table propounded by them. The defendant Mussammat Phulan denied that the plaintiffs and her father Harnám were descended from a common ancestor. The land was acquired by Sadaband, grandfather of Harnám, Mussammat Phulan *admitted that plaintiffs would be entitled to succeed if they were collaterals* (Jaddi). The District Judge found the pedigree table not proved and dismissed the suit on 29th August 1905 and the Additional Divisional Judge for the same reason dismissed the plaintiffs' appeal on 3rd May 1906.

Illustration (*iii*).—Bannias of Pánipat.

APPEALS NOS. 82 AND 83 OF 1905.

Mussammat Gulabi versus *Hargolal and Shahzada.*

Bannias of Pánipat—Daughters succeed by Hindu Law, not custom.

The parties were Bishnawi Bannias of Pánipat and it was found that they followed Hindu Law, and that therefore plaintiff, as daughter, was entitled to succeed. The Divisional Judge on 8th April 1895 dismissed the appeal, and this order was upheld on 25th April 1898 in Chief Court Civil Appeal No. 844 of 1895, the Chief Court concurring in thinking that plaintiff followed Hindu Law and not custom.

The three following decisions do not concern agriculturists and are not conclusive, but are interesting as being the only examples found in this district which support, however remotely, the judgment under discussion.

Illustration (iv).

APPEAL No. 38 OF 1889.

(See infra illustration No. 7, question 58).

In this case the reversioners in the donor's family were claiming against a daughter of the donees and the ultimate decision shows how strong is the feeling against the succession of daughters.

Illustration. (v)

APPEAL No. 621 OF 1897.

Allahdia versus *Mussammat Roshni and others.*

Tirkhans of Pánipat town are bound by Mohammedan Law.

The parties were Mohammedan carpenters of Pánipat town and the plaintiff as an uncle of the deceased sought to exclude the daughter and sister of the deceased. A commission was appointed by the Lower Court to hold an enquiry and his report was that daughters were excluded by sons, but that no well established custom was made out excluding them under other circumstances. The Divisional Judge found that Illahi Bakhsh's father Karim Bakhsh had predeceased his father Pir Bakhsh, and that the present plaintiff, the other son of Pir Bakhsh, succeeded to the entire estate under Mohammedan Law. He therefore found that the parties were governed by Mohammedan Law and on 10th March 1898 dismissed the plaintiffs' appeal upholding the order of the Honorary Munsiff dated 31st August 1897, dismissing the claim. The suit related to a house in Pánipat and the parties owned no agricultural land.

Illustration (vi).

CIVIL APPEAL No. 85 of 1896.

Bajudi versus *Maula Bakhsh.*

Nais of Karnal—Daughters not excluding nephews.

The parties were Nais of Karnal town. The first court found that the defendant had failed to prove a custom entitling a daughter to inherit her father's property in the presence of a nephew. Upon appeal the Divisional Judge gave judgment as follows :—

" Upon the custom whether a nephew excludes the daughter I am not prepared to accept the finding of the Lower Court. The witness of the defendant Maula Bakhsh give at least three instances in which daughters among Nais of Karnal have succeeded in the absence of sons, and to the exclusion of nephews, and no instances

have been given the other way. The Tahsildars of Karnal and Pánipat were appointed commissioners to make a local enquiry as to custom, and both report that in the absence of sons daughters succeed."

The Divisional Judge would not remand the case for further enquiry as he found that defendant had in any case been in adverse possession beyond the period of limitation. He accordingly accepted the appeal and dismissed the suit.

The remaining two illustrations are the only instances obtainable of mutations decreeing succession to daughters, and in neither of them was customary law the ground of decision, while the latter emphatically states that the decision is contrary to custom.

Illustration (vii).—Játs of Jaurasi Khálsa.

On the death of one Rám Jas, his widow Rupu succeeded. On the death of Rupu, in the absence of near collaterals the land was managed by Mussammat Lado, the daughter. A crop was harvested before mutation proceedings at which the title of Mussammat Lado was disputed by the nearest collaterals who were seventeen in number and nine degrees distant. The Revenue Officer decided in favour of Mussammat Lado not because she was entitled to the land, but simply and solely because she was in actual possession, *vide* mutation No. 34, dated 9th June 1890

Illustration (viii)—Gujars of Chaprian.

On the death of one Amon, who left neither widow nor issue, mutation was effected in the name of Bir Dei, his brother's daughter. But this was on the ground that the collaterals claiming against her could not establish their relationship : and in his order the attesting officer expressly stated that he granted mutation only because there was no other lawful claimant and in spite of the fact that by Customary Law the woman was not entitled " *qabza go riwajan na ho waris hai* "—Mutation No. 130 of 1904.

It is therefore to be regretted that we have not in detail the grounds on which the opinion of the learned Judge to the effect that there is an " established custom to the contrary " was based, for beyond the admitted fact that case law elsewhere has had a tendency to find such a custom, no ground is given. It is respectfully submitted that such a tendency is not a very convincing argument on which alone to find a custom to exist in a different locality, among a people who have been recorded as professing the contrary especially when the instances at hand point to the opposite conclusion. It may therefore be expected that should the point be raised again this judgment will be considered rather as a pronouncement on the facts then before the Court, and not as a final ruling on the question of custom. And to this interpretation colour is lent by the concluding words which seem to show that the decision was the result rather of the lack of evidence on the one side than of conclusive proof on the other.

QUESTION 19.—*What are the rules of succession when a proprietor dies leaving—*

(*a*) *Several sons ;*

(*b*) *Sons of several sons ;*

(*c*) *Sons and sons of sons ?*

ANSWER.—All tribes agree that the surviving issue male inherit *per stirpes*, fathers excluding sons, and sons sharing equally.

Note to Question 19—

The reply in the text can apply to *pagvand* only. In families in which *chundavand* is followed the estate is divided into as many shares as there are widows, or where the mother be dead, families capable of representing their mothers. Within the family the rule given in the text is followed. See questions 20, and 21, Chapter III *infra*.

QUESTION 20.—*If a proprietor die leaving several sons by different wives, by what rule is the estate divided ?*

ANSWER.—The Sayeds of Barsat follow the rules of succession ordained in the Shara The family of Sayeds in Faridpur who claim descent from Qasim follow the custom of *chundavand*, the estate being divided into as many shares as there are wives. All other tribes profess to be governed by the doctrine of *pagvand*, and the inheritance is divided equally among all sons without distinction.

Note to Question 20—

Several instances of *chundavand* are given as having occurred in tribes which as a rule adopt *pagvand*. It seems probable that such instances were either due to the mutual consent of the parties, or were found to be special family custom. The general rule is *pagvand :* but each disputed case must be decided on its own merits, there being no tribe in which both customs have not prevailed in some family or on some occasion.

Illustration 1.—Játs, Man Got, of Balla.

CIVIL APPEAL No. 490 OF 1895.

Harnarain and others versus Shankar and others.

Játs, Man Got, of Balla: *chundavand.*

The parties were Játs of the Man Got residing in mauza Balla, tahsil Karnal, and were descended from one Maiya. The plaintiffs were collaterals of the half blood and were claiming as against the collaterals of full blood. The first Court found that the estate of the deceased Maiya had been inherited by his sons according to the rule of *chundavand* and he held that collaterals of the whole blood excluded those of half blood, as no custom to the contrary had been proved. He therefore dismissed the suit on 24th June 1895. The Divisional Judge on appeal concurred remarking in his judgment that in this very village at Settlement Mr. Ibbetson noted four instances of succession by *pagvand* and 10 by *chundavand*.

Illustration 2.—Sayeds of Faridpur.

APPEAL No. 11 OF 1906.

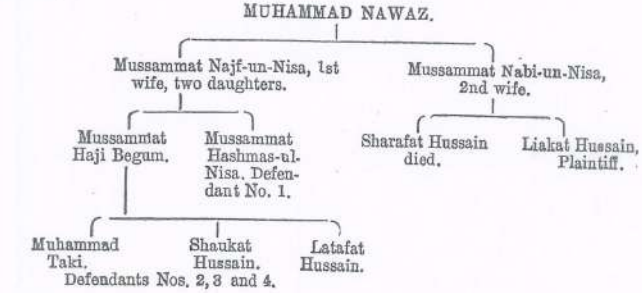
Liyakat Hussain versus *Mussammat Hushmas-ul-Nisa and others.*

Sayeds of Faridpur : *chundavand.*

The parties were Sayeds of Pana Kasim, mauza Faridpur, tahsil Karnal, and the question was whether they were bound by the custom of *chundavand* or not. The District Judge decreed the plaintiff's claim on 27th November 1905. This order was reversed on appeal by the Additional Divisional Judge and suit dismissed on 23rd June 1906. On appeal to the Chief Court, *vide* Chief Court Civil Appeal No. 1039 of 1906, judgment was given on 9th April 1907 as follows :—

" The facts are fully given in the judgments of the Lower Courts.

It appears that in August 1887 one Muhammad Nawaz died. The relationship of the parties to each other is shown in the following table :—



The parties belong to a particular family of Sayeds in mauza Faridpur in regard to whom there is a special clause in the *riwáj-i-ám* to the effect that succession among them is governed by the *chundavand* rule.

Muhammad Nawaz left two widows. One Mussammat Najf-un-Nisa had one living daughter, Mussammat Hashm-ul-Nisa, and also three grandsons, sons of daughter Mussammat Haji Begum, who had predeceased Muhammad Nawaz. After Muhammad Nawaz's death, an arrangement was come to in regard to which the two minor sons of Mussammat Nabi-un-Nisa were represented by their mother and their mother's brother. The persons who effected the arrangement

were persons of repute of the same family, but not actual relations, a zaildár and a lambardár.

The arrangement was that first some 60 *bighas kham* forming one well, were set aside for Mussammat Nabi-un-Nisa, then one-third of the remainder was given to Mussammat Najf-un-Nisa and two-thirds to the sons of Muhammad Nawaz by Mussammat Nabi-un-Nisa.

This was not exactly Mohammedan Law. No doubt, what really happened was that one widow and the two sons each took an equal share. One of the minor sons of Muhammad Nawaz died, the other Liakat Hussain has come of age and now seeks to recover possession of the share allotted to Mussammat Najf-un-Nisa, who died in 1894, and which she had gifted to her daughter and three grandsons.

After the arrangement come to on the death of Muhammad Nawaz, Mussammat Najf-un-Nisa sued Mussammat Nabi-un-Nisa and her sons to have her possession made up to a half share, alleging a custom which she called *chundavand*, under which one widow was entitled to take half, the other widow and her offspring the other half. This was dismissed, the dismissal being largely due to the fact that the Courts held that Mussammat Najf-un-Nisa had clearly accepted the arrangement and could not be allowed to back out of it.

Mussammat Hashmas-ul-Nisa had previously claimed 14-80th of the inheritance, her share according to Mohammedan Law, and this suit was dismissed finally on 6th November 1893, it being held that the parties were not governed by Mohammedan Law.

In this suit the defence is mainly to the effect that the arrangement made in 1887 is binding and that the special custom under which a widow takes equally with another widow and her offspring or with the descendants of another widow if she be dead, obtains in the family.

The learned Divisional Judge has held both that the custom is proved and that the plaintiff is bound by the arrangement come to in 1887.

Whether or not the evidence is sufficiently strong to prove that the special custom set up really obtains is a doubtful question, but we think it is clearly shown that the family does not follow ordinary agricultural custom, and that in many cases females have been allowed to succeed to a full estate with males. The fact that the evidence was sufficiently strong to convince a Divisional Judge of Dehli of Mr. Clifford's knowledge and experience is important in connection with the question we now propose to consider, whether or not we should hold Mr. Clifford's view to be right.

No doubt Liakat Hussain's mother was not his guardian under Mohammedan Law, nor was his maternal uncle. But there is nothing to show that there were any near agnate relations of Liakat Hussain who could have better looked after his interest, and there is every

reason to believe that his mother and maternal uncles were doing their best for him. Their interests were in no way inimical to his. By coming to an arrangement such as was made, maintenance was secured for Mussammat Nabi-un-Nisa, and two-thirds of the remainder secured to her sons, one-third going to the other widow and her family. Mussammat Najf-un-Nisa might have proved her claim to half, or she might not, but the result of this litigation so far shows that there was no foregone conclusion against her and it was certainly in the interest of the minor to avoid litigation. We think therefore that in the absence of all persons better qualified to protect his interests, or to be his guardian, the plaintiff is bound by the arrangement made in good faith and for his benefit by his mother and his maternal uncle, and this view is supported by that taken in the following rulings:—*I. L. R., Calcutta, page* 36, *and* 52 *P. R. of* 1904 *and XI Weekly Notes, page* 71.

One other point requires notice. It is contended that even under the arrangement which was come to on the death of Muhammad Nawaz in 1888 Mussammat Najf-un-Nisa was only intended to take and only took a life interest. This contention we think untenable. Very shortly after 10th April 1888, Mussammat Najf-un-Nisa gifted the land in equal shares to her daughter Mussammat Hashmas-ul-Nisa and the sons of her other predeceased daughter, and that gift still holds good, and in the suit of 1893 Mr. Rennie, Divisional Judge, in his judgment of 6th November 1893 pointed out that on Mussammat Najf-un-Nisa's death her share would in the ordinary course pass to her lineal descendants in the female line. We think that Mussammat Najf-un-Nisa took a full estate.

The appeal accordingly fails and is dismissed with costs."

QUESTION 21.—*If a man die leaving two widows of whom one has a son and the other has not, what are the rights of the sonless widow?*

ANSWERS.—The Sayeds of Barsat follow the Shara, other Sayeds, the Sheikhs, and Afgháns of Karnal, the Játs of Karnal, Rors, Bairágis and Aráins state that the sonless widow is entitled to maintenance only. The Játs of Pánipat, all Rájputs and all Gujars of Pánipat state that she has a life interest in half the estate but has no power of alienation. No other tribe recognize any custom on the point.

Note to Question 21.—

It would seem, however, that in families in which the custom of *chundavand* prevails, the sonless widow invariably takes a full share.—

Illustration 1.—Rájputs of Nisang.

Vide mutation No. 51, dated 10th June 1891, quoted in question 16.

Illustration No. 2.—Brahmins of Kairwali.

The parties were related as follows :—

Mussammat Bhagwani = Kurya = Mussammat Randia.
|
Hargolal.

On the death of Kurya, Hargolal and Mussammat Randia survived and succeeded to his estate in equal shares, *vide* mutation No. 395, dated 19th February 1908.

Illustration No. 3.—Játs of Kheri Shahpur.

After the death of one Randia, the son and his step-mother succeeded jointly to an inheritance which came to them on the death of a collateral, *vide* mutation No. 224, dated 24th October 1907.

QUESTION 22.—*If a man die leaving no issue but a plurality of widows, do the latter inherit in equal shares ?*

ANSWERS.—All tribes agree that the widows inherit in equal shares, provided that a widow who is not of the tribe of her deceased husband takes nothing. Instances of inheritances by two widows of the same tribe in accordance with this custom are given by the Rors of Karsa, the Játs of Bala and the Gujars of Pasina Kalán.

Note to Question 22.—

No instance of the proviso in the text having been carried out has been ascertained. The answer to question 25, Chapter III, shows that the offspring of such a wife are not excluded and the cases quoted below seem to show that the proviso is not well established. It is probable therefore that the Courts would not accept it without strict proof.

Illustration No. 1.—Sayeds of Karnal town.

Civil Appeal No. 184 of 1897 quoted in the notes to question 16, Chapter III. The case, however, is not altogether in point as the widow in that case had a claim to dower apart from the claim now under consideration.

Illustration No. 2.—Sayeds of Pánipat.

APPEAL No. 222 OF 1897.

Mussammat Azim Nisa versus *Nasib Ali and others.*

Sayeds of Pánipat. *Ghairqaum* not excluded.

The parties were residents of Pánipat and the plaintiff claimed her share in the surplus income of the lands attached to the Dargah of Shamas-ud-din. The plaintiff was the widow of Ghulam Jalal. The defence was that the family were Sayeds and that the plaintiff being a *ghairqaum* wife, *i. e.*, not a *Sayedani*, was not entitled to succeed. The Divisional Judge after a remand doubted whether the family were Sayeds at all, but assuming them to be Sayeds he found that defendants had failed to establish a custom excluding *ghairqaum* wives from inheriting, and accordingly dismissed the appeal.

QUESTION 23.—*If a man die leaving two widows, but no issue, will on the death of one widow the other succeed to her estate or will succession be to the collaterals of her husband ?*

ANSWER.—In Pánipat the Patti of Chuhar Khan state that any property which may have come to the deceased widow from her father's family will revert accordingly, but that the second widow will succeed to property which came from the husband. Patti Hayat Khan state that in neither case does the surviving widow succeed, the right of succession being to the collaterals. Patti Kalyar agree with all other tribes in stating that the surviving widow succeeds to all the property left by the deceased.

Note to Question 23—

(*i*) Patti Hayat Khan has been unable to give a single instance in support of their alleged custom : and it seems doubtful if the courts would enforce it.

(*ii*) For an illustration of the general custom *vide* mutation No. 299, dated 24th June 1904, Mauza Goli. The parties were Bairágis and on the remarriage of the one widow, the other succeeded to the estate.

QUESTION 24.—*Is the property inherited from the mother shared by real sons with step-sons.*

ANSWER.—Among all tribes real sons have a prior claim to step-sons.

QUESTION 25.—*What is the status of—*

(*a*) *Children by a woman introduced into the house without the performance of a marriage ceremony, as might happen in the case of union with a deceased brother's widow ?*

(*b*) *Children by a woman with whom the wedding ceremonies have been duly performed, but whose marriage is subsequently discovered to be invalid ?*

ANSWER.—Rájputs of Pánipat town, all Mussalman Rájputs and Aráins state that in both cases such offspring are considered to be illegitimate, and are not entitled to inherit from their father's estate. Hindu Rájputs say that case (*a*) could not arise among them : but that should case (*b*) arise the children would be permitted to share equally with legitimate children. Tagas and Brahmins would outcaste the persons immediately concerned. Other tribes agree in considering such children as illegitimate, but state that they should share equally with other sons. Bairágis and Gusáins state that union with a deceased brother's widow is considered as a valid marriage without the performance of any ceremony, but otherwise agree with all other tribes in considering such children as illegitimate yet qualified to share equally with other sons.

Note to Question 25—

(*a*) See note to question 11, Chapter I. Such unions, though deprecated, would seem in effect to be generally considered as marriages and convey no disability beyond a certain amount of social odium.

(*b*) The correctness of the reply that the offspring of such a union are considered illegitimate may be doubted in face of the admission that they inherit equally with true born sons, and of the reply to question to the effect that illegitimate sons can never be legitimatized. A certain moral stigma may attach to the birth, but it is not considered to carry with it any legal disqualification.

Illustration 1.—Gujars of Bahrampur.

Sita, son of Rullia, married Mussammat Gumani, a Mahajani. Her two sons inherited.

Illustration No. 2.—Gujars of Ujah.

One Kura married a woman of unknown caste. Her son succeeded to Kura's estate.

QUESTION. 26.—(*i*) *Is a child born after marriage but in less than the customary period of gestation, considered legitimate or illegitimate, if it be proved that the mother was pregnant before marriage—*

(*a*) *of a stranger ;*

(*b*) *of the man she eventually married ?*

(*ii*) *If a husband and a wife be parted from one another and a child be subsequently born, within what period after separation must it be born in order that it may be considered legitimate ?*

ANSWER.—(*i*) A child born according to the Rájputs of Pánipat town within six, and according to all other tribes within seven, monhs from the marriage day is considered illegitimate, no matter who the father may have been.

(*ii*) According to Rájputs a legitimate posthumous son may be born within three years, and according to all other tribes within ten months from the date of death or separation from the husband, provided always that pregnancy be claimed from the outset.

Note to Question 26—

As in question 25, Chapter III, the Játs profess a code of higher morality than that which they practise. A son born in the house is invariably accepted as a son of the house; and the only son who is excluded is the *pichlag* or *gailar*, the step-son born before remarriage.

In any case a civil court would undoubtedly follow the dicta of medical jurisprudence on the main point raised in the question in preference to the superstitions of the particular tribe with which they might happen to be dealing. For the legal presumption of legitimacy, *vide* Section 112 of the Evidence Act.

QUESTION 27.—*What are the rights of a step-son born in the house of—*

(*a*) *his natural father ;*

(*b*) *his step-father ?*

ANSWER.—All tribes in which such a relationship is possible agree that the step-son in either case is considered the son of his natural father and cannot inherit from his step-father, who is responsible for his maintenance and that only until he be old enough to provide for himself.

Note to Question 27—

Case (*b*) cannot, however, arise, for if the woman be known to be pregnant remarriage is delayed till the child has been born.

A single instance has been forthcoming of inheritance by a step-son with the consent of his step-father, such consent estopping the claims of the real children.

Illustration.

APPEAL No. 616 OF 1906.

Darba versus Bhagwana and Bakhta.

Gujars of Jalmana Gailars—Sucession.

The parties were Gujars of mauza Jalmana, tahsil Pánipat, and plaintiff, who had somehow obtained possession, claimed a declaration against defendants, who had obtained mutation, on the ground that they were Gailars and not entitled to succeed. It was found that the defendants had been allowed to succeed with the consent of the plaintiff's father, but that defendants obtained a little less than the share owned by the deceased, and the *riwáj-i-ám* mentioned this particular instance as one of succession by Gailar. The District Judge held the plaintiff bound by the consent of his father, and on 27th July 1906 dismissed the suit. The Additional Divisional Judge dismissed the plaintiff's appeal on 23rd October 1906. A petition for revision was rejected in the Chief Court. See Chief Court Civil Revision case No. 604 of 1907.

QUESTION 28.—*Can a* gharjawai, i.e., *a son-in-law who takes up residence with his father-in-law, ipso facto acquire a title against—*

(*a*) *issue male of his father-in-law ;*

(*b*) *Collaterals ?*

ANSWER.—In no case can a *gharjawai* acquire title as against a son, but among the Sayede of Baras, Panauri, and Faridpur he acquires a title as against collaterals. In all other tribes he may claim to inherit the chattels but never the land.

Note to Question 28.—The rule is illustrated by the local proverb—

"*Bhon bhai : ghar jawai.*"

"The land to the brother, the home to the daughter's husband."

QUESTION 29.—*If a daughter or her issue die, who succeeds to property—*

(*i*) *inherited by her from her father-in-law ;*

(*ii*) *gifted to her by her father ;*

(*iii*) *self-acquired ?*

ANSWER.—Among the Rájputs of Pánipat and the Sayeds of Sayedpura property acquired from the husband's family will revert thereto: self-acquired property and property gifted by the father will revert to the father's family. Among Bairágis and Aráins only property gifted to a daughter will devolve upon her father's relations. All other tribes point out that with them the daughter cannot acquire at all.

QUESTION 30.—*Does the performance of the funeral obsequies affect the rights of inheritance ?*

ANSWER.—The answer of all tribes is in the negative.

QUESTION 31.—(*a*) *If a man attach himself to any sect of faqirs are his rights of inheritance thereby affected ?*

(*b*) *If as a faqir he acquire estate, who inherits on his death ?*

ANSWER.—With the exception of the Aráins and the family of Hayát Khan of Pánipat who assert that with them neither does a man lose his rights of inheritance by becoming a *faqír*, nor are his natural heirs prevented from succeeding to him, all tribes agree that a man who joins a brotherhood of *faqírs* loses his rights of inheritance in the natural family, and that succession to any estate which he may acquire as a *faqír* follows the rules of the brotherhood.

Note to Question 31—

The answer of the Aráins and of the family of Hayát Khan is the same as that recorded by them at last settlement. When referred to them for further reconsideration after attestation they persisted in their statement that the answer given at last settlement is correct, but they can quote no instance in which they have either permitted a *faqír* to inherit ancestral property, or have themselves inherited from a *faqír*.

If a man of another tribe become a *ghiristi faqír*, a sect which admits marriage, the same rules apply: but the son of a *ghiristi faqír* generally succeeds his father. The custom asserted is said to apply retrospectively as well as prospectively, and a cultivating owner who becomes an ascetic forfeits his right to retain the land he has inherited.

CHAPTER IV.

PARTITION.

QUESTION 32.—(*i*) *Can his sons demand the partition of their father's property ?*

(*ii*) *If so, is a distinction made between ancestral and self-acquired property ?*

(*iii*) *What is the share of the father ?*

(*iv*) *What is the share of a son born subsequently to the partition ?*

ANSWER.—All tribes agree that a son cannot demand partition against the will of his father. If however by common consent a partition be made, father and sons share equally *per capita :* and on the birth of another son the property of his brothers is redistributed so as to give him an equal share, but the father's share is not affected.

Note to Question 32—

At last settlement the Játs of Pánipat tahsil and several other tribes stated that a son could compel partition, and one instance was quoted. It seems, however, that the revised answer is correct, the idea of a son compelling his father against his will being abhorrent to all tribes: and the mistake having probably arisen from the fact that voluntary partitions are frequent. Such distributions however are not necessarily permanent, being intended for convenience of cultivation and livelihood, and being made usually when the sons have grown up and married. The same custom prevails in Gurgáon, *vide* Tupper's Customary Law, Volume 2, page 168.

QUESTION 33.—*Is self-acquired property exempt when partition of the family estate takes place ?*

ANSWER.—All tribes agree that self-acquired property is exempt from partition. Instances of such exemption are quoted from Gharaunda and Kalaroon among the Rájputs and Játs respectively.

Note to Question 33—

Self-acquired property in the meaning of this section appears to mean property obtained entirely from an outside source and by independent effort. It does not include the fruit of the separate employment of a portion of the joint capital.

QUESTION 34.—*If there be a partition in which the father and one son accept two undivided shares while the remaining sons each take a separate share and if the son who has remained joint with his father subsequently die, who succeeds to his undivided share ?*

ANSWER.—All tribes agree that the share of the deceased son goes to his issue male, if any, and if not, remains with the father. The brothers of the deceased do not succeed to it in the presence of the father.

CHAPTER V.

WIDOWS AND THEIR RIGHTS: SPECIAL PROPERTY OF WOMEN.

QUESTION 35.—*How are the rights of a widow affected,—*

(*i*) *by unchastity ;*

(*ii*) *by remarriage with a stranger ;*

(*iii*) *by remarriage with a brother of the deceased husband ?*

ANSWER.—In all cases both undeniable unchastity and remarriage, whether with a brother-in-law or not, annuls the right of a widow to hold the inheritance she has received from her husband.

Note.—(*i*) Unchastity must always be gross, and in practice very strict proof such as the fact of the actual birth of an illegitimate child, is required.

(*ii*) The opinion quoted in the text is undoubtedly the opinion of all the agricultural tribes as to the fitting course to be pursued, should such a contingency arise. Civil Courts, however, with their Western tendency to protect the proprietary rights of the female, have laid down that the *onus* is on those who assert the existence of a custom sanctioning forfeiture (*vide* Rattigan's Customary Law, Section 31). In effect this means that to obtain a decree of possession against a widow undeniable instances of the dispossession of widows on proof of immorality must be produced in court. But there is a natural tendency to hush up scandal, and in many cases a widow who becomes pregnant illicitly is brought into the house of the nearest collateral of the deceased husband and he claims paternity. For instances *vide* note to question 11, Chapter I. It is, therefore, extremely difficult to discharge the burden of proof. For the Játs of Mahaoti, in three cases, two directly conflicting decisions on the same facts have been given, the Divisional Courts in the one case accepting, in the others rejecting, the testimony of the *riwáj-i-ám*. Of the two, however, the latter, it is submitted, is the only decision which the agricultural population believe to be just : and it accords with the custom found to be that of the Játs of Kaithal (No. 75 Punjab Record, 1886).

Illustration 1.—Játs of Mahaoti.

APPEAL No. 183 OF 1889.

Dhani Rám versus *Mussammat Mari.*

Játs of Mahaoti—Widow—Forfeiture for unchastity not decreed.

The parties were Játs of Mahaoti in tahsil Pánipat, and the original suit was disposed of on 23rd March 1889. The case was remanded on appeal for enquiry as to whether the widow forfeited her rights owing to unchastity. The Divisional Judge after the remand gave judgment as follows :—

"The witnesses are of opinion that a widow ought to forfeit her right for unchastity, but they cannot cite any instances. I must, therefore, follow P. R., 107 of 1888. I find that plaintiffs have failed to prove that Mussammat Mari must forfeit her right in her deceased husband's estate, because she has been unchaste."

The suit was accordingly dismissed.

Illustration 2.—Játs of Mahaoti.

CHIEF COURT, 1263 OF 1898.

Játs of Mahaoti—Widow—Forfeiture for unchastity decreed.

The plaintiffs were distant collaterals of one Tulso, and claimed possession of the estate as against the widow on the ground that she had forfeited her life estate by misconduct. The Divisional Judge held that the *riwáj-i-ám* of tahsil Pánipat was clear that misconduct entailed forfeiture, and was of opinion that no evidence worth the name had been given to rebut the custom as recorded in the *riwáj-i-ám*. The case was finally disposed of by Chief Court No. 1263 of 1898, but this finding was not interfered with.

Illustration 3.—Játs of Mahaoti.

CIVIL APPEAL 5 OF 1905.

Amin Alal and others versus *Mussammat Mari and others.*

Játs of Mahaoti—Widow—Forfeiture for unchastity not decreed.

The parties were Játs of mauza Mahaoti, tahsil Pánipat, and the question was whether Mussammat Mari had forfeited her life estate by reason of immorality. The first Court on 30th November 1904 dismissed the claim of the reversioners to oust the widow. The claim was also based on the ground that the widow had performed a *karewa* marriage, but this was found not proved.

The Additional Divisional Judge also found the *karewa* not proved, and on the question of the widow's immorality gave judgment as follows :—

"She has no doubt been immoral, but it was decided in the former case that mere immorality does not entail forfeiture of her widow's life estate, and the decision of this issue acts as *res judicata* on the present case. Even apart from the previous decision the *onus* of proving a custom sanctioning forfeiture lay upon the plaintiffs (Rattigan's Digest paragraph 31). No evidence of any value was adduced to prove this custom. The plaintiffs relied upon an entry in the *riwáj-i-ám*, upon a decision of Háfiz Anwar Ali, Additional District Judge, dated 19th April 1895, and upon the ruling P. R. 75 of 1886. This ruling was however given in the case of Játs of the Kaithal tahsil—the parties belong to the Pánipat tahsil—and it was observed in it that the evidence was not precise and only concerned the Kaithal tahsil, so it cannot apply to the present case. Mr. Stogdon's decision of 1889, even if it does not operate as *res judicata* as I hold it does, is very strong evidence under Section 13 of the Evidence Act, for the conclusion that among Játs of the Pánipat tahsil immorality by a widow does not *per se* entail forfeiture of her life estate."

The appeal was accordingly dismissed by the Additional Divisional Judge on 23rd February 1905, and the petition for revision in the Chief Court was rejected on 6th July 1905 (*see* Chief Court Civil Revision No. 998 of 1905).

Illustration No. 4.—Játs of Dahra.

APPEAL 319 OF 1895.

Dharam Singh plaintiff, versus ***Mussammat Ghogri, defendant.***

Játs of Dahra—Widow—Forfeiture for unchastity decreed.

The parties were Játs of mauza Dahra, tahsil Pánipat, and the first Court following the *riwáj-i-ám* decreed the claim of the plaintiff-reversioner of the widow-defendant on the ground that the widow had forfeited her life-estate by reason of misconduct as evidenced by her giving birth to an illegitimate child. This was on 19th April 1895. The defendant, the widow, appealed, but her appeal was rejected time-barred on 5th July 1895, (*see* also Examples 79 and 85 in the vernacular *riwáj-i-ám* for Rors and Játs, respectively).

Illustration 5.—Taga Brahmins of Kharak.

APPEAL No. 418 OF 1906.

Kewal and others versus *Mussammat Rukman and Mussammat Dharmon.*

Taga Brahmins of Kharak—Widow.—Forfeiture for unchastity not decreed.

The parties were Taga Brahmins of Kharak, tahsil Karnál and the plaintiffs claimed to recover the estate on the ground of Mussammat Rukman's unchastity. Mussammat Dharmon was joined as a defendant as the widow of a collateral because she would not join in suing. The first Court found against the plaintiffs and dismissed the suit on 17th May 1906. On appeal the Additional Divisional Judge upon the question whether the widow forfeited her estate by reason of unchastity gave judgment on 7th August 1906 as follows :—

"I am quite clear that the widow has been guilty of unchastity. The fact of her having given birth to a child is sufficient to make her unchastity known and patent to every one. Whether she forfeits her estate in consequence is a more difficult question.

"Mauza Kharak, where the land in suit is situate is in pargana Indri which was settled in 1886 or 1887, and unfortunately the *riwáj-i-ám* then prepared does not apply to Taga Brahmins. The other agricultural tribes, however, distinctly state that unchastity does forfeit the estate. Mr. Kensington at pages 17 and 18 of Volume X, Customary Law of Ambala, points out that the universal feeling of the people is in favour of forfeiture. Mr. Douie at page 11 of Volume VIII, Customary Law of Kaithal and Indri, refers to the custom as a general and well known one.

"My own experience is that the general feeling is in favor of forfeiture, but in the face of Chief Court No. 107 P. R. 1888, I fear I can do nothing. The *riwáj-i-ám* does not refer to this tribe and no instances have been proved. However, much my sympathy is with the plaintiffs, I regret that I can do nothing, and having regard to Chief Court No. 107 P. R. 1888, I regret that I am compelled to find that plaintiff has not proved a custom of forfeiture among Taga Brahmins, though such is undoubtedly the custom among the other agricultural tribes in the same *pargana*.

"For the reason above given, I regret that I must dismiss the appeal order accordingly."

Note.—Chief Court No. 107 P. R. 1888 is the leading case in which it was laid down that a special custom of forfeiture must be proved. The result of that decision was to accentuate the class of case in which, when the reversioners seek mutation on the ground that the widow had forfeited her estate by remarriage, they are opposed by the widow, who, denying that she has married again, asserts that she is merely living in illicit union with a paramour, and that unchastity is no bar to her holding her life estate. These cases are rendered difficult by the facts that formal *karewa* is a ceremony so brief and simple that it is difficult to produce convincing proof ; that on some cases ceremonials are not observed at all, and that in the case of *karewa* with the nearest male relative of the deceased proprietor, mere co-habitation is generally sufficient proof of marriage. It is therefore difficult for a revenue officer to decide the exact status of a widow who admits co-habitation but denies marriage ; and unless and until the present rule as to the burden of proof (Rattigan's paragraph 31) is revised for the Delhi territory, the difficulty will continue. Gurgáon and Rohtak are emphatic that the custom of forfeiture does prevail, *vide* Tupper's Customary Law, Volume 2, pages 144 and 147, and the people of this district are no less certain : there are however a few decisions to the contrary, *e.g.*, 100 P. R. 1891, the Arains of Sirsa, and No. 88 P. R. of 1900, Sikh Játs of Sirsa, but these, it is submitted, should not overrule the universal opinion of these other districts, which, given at a time when no litigation is pending, should carry the more weight. The present ruling not only appears contrary to practice, but is, it is contended, subversive of morality, in putting a premium on illicit unions. For that remarriage entails forfeiture is undeniable, numerous instances being forthcoming.

Illustration 1.—Játs of Pardhana.

Settlement records of 1887, *khata* No. 44, Mussammat Dharmo lost her estate on remarriage.

Illustration 2.—Rájputs of Balu.

Vide mutation No. 413, dated 2nd December 1908.

Illustration 3.—Játs of Ráipur.

Mutation No. 122, dated 21st May 1904.

Illustration 4.—Bairágis of Goli.

Mutation No. 299, dated 24th June 1904.

It is submitted, therefore, that the penalty which admittedly attaches to remarriage should also attach to unchastity and that this is, in fact, the custom of this tract.

QUESTION 36.—*Are the rights of a widow affected merely if she leaves her deceased husband's house and takes up residence—*

(*a*) *in her father's house;*

(*b*) *in a strange village?*

ANSWER.—A widow may reside where she chooses.

QUESTION 37.—*What right has a widow to alienate,*

(*a*) *by sale,*

(*b*) *by mortgage,*

(*c*) *by gift,*

(*d*) *by will?*

ANSWER.—(*a*) (*b*), All tribes agree that a widow has no power to sell land: but that with the previous consent of the collaterals of her late husband she may mortgage in case of urgent family necessity.

(*c*), (*d*) Rájputs of Pánipat state that with a similar consent a widow can dispose of her estate by testament, and the Mussalman Rájputs of the villages assert that in all cases a widow has a right of gift and bequest by will. All other tribes deny to a widow any power of alienation by gift or testament.

Note to Question 36.—In contradiction of this custom as alleged to be observed by the tribes it has been decided by the Chief Court in numerous cases, that where necessity is sufficient a widow has the power to raise the necessary funds as a charge upon the estate so as to bind the heirs, and may even sell so much of it as may be necessary.

That a widow is forbidden to alienate otherwise is illustrated by the following case.

Illustration 1.—Rors of Phusgarh.

APPEAL No. 518 OF 897.

Ramanand versus *Mussammat Rami and others.*

Rors of Phusgarh—Reversion of land to original family.

The parties were Rors of mauza Phusgarh, tahsil Karnal, and the suit was to contest an alienation by Mussammat Rami, widow of Udmi. The plaintiffs were descended from Mehru while Udmi was the son of Hakumat, a stepson (Gailar) of Mehru who was allowed to succeed to part of the estate of Mehru. It was held by

the Divisional Judge that the issue of Hakumat being extinct the land would by custom revert to the descendants of Mehru, and therefore plaintiff was, as reversionary heir, entitled to sue. The appeal was accordingly dismissed, the order of the Munsif decreeing the claim being maintained. A petition for revision from the order of the Divisional Judge was rejected. *See* Chief Court Civil Revision No. 822 of 1898-99.

QUESTION 38.—*Has a woman power of alienation over land which has been gifted to her at marriage?*

ANSWER.—The Rájputs of Patti Hayát Khan and Aráins say that though no such case has ever in fact arisen a woman should have full power of alienation over land gifted to her as dowry (*jahez*) but that she cannot alienate land received as dower (*mehr*) without the consent of the husband. Other Rájputs of Pánipat town simply state that there is no custom on the point. The Sayeds of Jalpahar, Sayedpura, Baras, and Panauri state that a woman can mortgage property so received for sufficient necessity. All other tribes agree that the husband has full control over both the real and personal estate of his wife.

Note to Question 38—

Neither those Rájputs nor those Sayeds who profess to admit a power of alienation in such cases can quote a single instance in which it has occurred. In practice land is not given in dowry to a bride, nor is she presented with land by her husband. The question therefore deals with a contingency which has never as yet arisen. under these circumstances little value can be ascribed to the opinions quoted in the text.

CHAPTER VI.

ADOPTION.

QUESTION 39.—(*a*): *Can*

(1) *a stranger,*

(2) *the younger of several brothers,*

(3) *an only son,*

(4) *a daughter's son,*

(5) *a distant in preference to a near relative,*

be taken in adoption ?

(*b*) *Is a written deed essential ?*

ANSWER.—The Rájputs of Pánipat town cannot adopt a stranger or a daughter's son but can adopt either an only son or any one of several brothers. The adoptee must be of a generation younger than the adopter and generally, but not essentially, preference is given to a near relative. An oral adoption is valid, but there is a desire to insist on a written document.

Játs cannot adopt an only son of a stranger in the presence of relatives. Any one of several possible brothers may be adopted but not a daughter's son. A near relative can claim to be adopted in preference to a distant one. Arains have no custom of adoption. Brahmins can adopt a daughter's son, Rájputs can adopt an only son : but with these exceptions all tribes follow the custom of the Játs.

Note. to Question 39—

Illustration 2 shows that the custom of the Játs is not considered sufficiency binding to have the force of law.

Illustration 1.—Rajputs of Uncha Siwana, tahsil and district Karnal.

APPEAL No. 52 OF 1895.

Dhan Singh, plaintiff, versus Mussammat Budamon and others, defendants.

Rájputs. Adoption outside *got*.

This case was decided in favour of plaintiff on 24th December 1894 by the Additional District Judge, Karnal. The parties were Rájputs, *got* Mandahars, living in mauza Uncha Siwana, tahsil and district Karnal. One of the points at issue was whether one Kura, husband of Budamon adopted his *sala*, Mamraj. The lower Court after enquiry by a local commissioner found that an adoption outside the *got* was not valid by custom, and this finding was concurred in by the Divisional Judge.

Illustration 2.

CIVIL APPEAL No. 7 OF 1905.

Sis Ram versus Hira and others.

Játs of Gagsina. Adoption of distant in presence of nearer collateral.

The parties were Játs of mauza Gagsina, tahsil Karnal. The suit related to the estate of one Bakhtawar who had adopted one Hira, the only son of Rám Rikh, a collateral more distantly related than the plaintiff, who claimed possession of the estate as against Hira, in whose favour the land had been mutated during the lifetime of Bakhtawar by way of gift. The District Judge on 23rd December 1904 dismissed the suit, and the Divisional Judge of Ambala, as Additional Divisional Judge of the Delhi Division, on 22nd June 1905, dismissed the plaintiff's appeal. On appeal to the Chief Court no question was raised as to the fact of the adoption. The only point was whether the adoption was valid by custom, and on this question the judgment of the Chief Court Judges is as follows :—

"In the *riwáj-i-ám* of the Pánipat tahsil, which is also the *riwáj-i-ám* of the Karnal tahsil, it is laid down in the answer to question 5 that agnates have the right to be adopted in the order of propinquity to the adopter. The learned Divisional Judge accepts this as a correct statement of the custom and refers to Nos. 92 P. R. 1894 and 47 P. R. 1895, as authorities in support of his view. Both these cases relate to adoptions of persons related through females and they contain nothing about the alleged inflexible rule giving the nearer agnates a superior right to one more remote to be adopted. Such a rule, we are disposed to think, is rare in the customary law of adoption prevailing in Eastern Punjab. There is a strong feeling in favour of the right of agnates to be selected for adoption or appointment as heir, but nothing like a rule or absolute exclusion of remoter by nearer agnates. See Douie's *riwáj-i-ám* of tahsil Kaithal and pargana Indri, page 16, Kensington's Customary Law of the Ambala District, page 24, and Walker's Customary Law of Ludhiana, pages 67 to 69. The exclusion of an only son is also not inflexible or a general rule. The evidence in this case does not, we think, lead to a different conclusion. The adoption of Hira respondent is thus lawful, and it is not necessary to decide whether the plaintiff has been erroneously held to be ineligible as an only son.

The Divisional Judge's argument, however, is logically right. If the *riwáj-i-ám* is assumed to be a correct record, it follows that plaintiff is excluded as an only son, and the adoption of the respondent as the next in the order of agnatic relationship is unobjectionable. But in our opinion the true ground for decision is that defendant being a near agnate, only one degree more removed than the plaintiff, has been validly adopted, and plaintiff cannot get the adoption set aside.

The appeal is dismissed with costs.

See also Chief Court Civil Appeal No. 1393 of 1905, decided 1st March 1906.

QUESTION 40.—*Can a widow adopt a son at her own discretion?*

ANSWER.—A widow cannot adopt except with the written permission of her husband given before his decease, or with the consent of the next of kin.

QUESTION 41.—*What ceremonies are necessary to validate an adoption?*

ANSWER.—Rájputs of Pánipat state that the drawing up of a deed of adoption is the only necessary ceremony. Other tribes require that the adopted son be taken into the lap of the adoptor in the presence of the assembled brotherhood, to whom sweetmeats are distributed.

Note to Question 41—

Rájputs of Pánipat at the last settlement gave different answers, only those of Patti Hayát Khan insisting on a written deed and the other Patti admitting a public pronouncement or a public distribution of sweetmeats to be sufficient ceremonial. Insistence on a written deed is due to the fear of adoption being proved by false evidence.

QUESTION 42.—*Can a man adopt two sons?*

ANSWER.—Only if the first son die.

QUESTION 43.—*If after a legal adoption a natural son be born, in what share will the two inherit?*

ANSWER.—In equal shares.

QUESTION 44.—*Should a widow make a legal adoption, and the adoptee die, is she entitled to make a further adoption?*

ANSWER.—In no case merely at her own discretion though if the collaterals consent, she can.

QUESTION 45.—*Can an adopted son succeed to the estate of his natural father?*

(*a*) *in the presence of*
(*b*) *failing.* } *other lineal issue.*

ANSWER.—Among the Rájputs of Pánipat he inherits in both cases, but in all other tribes an adopted son entirely loses all claim to the estate of his natural father.

Note to Question 45—

Though a special search has been made for instances of the custom alleged by the Rájputs of Pánipat, none has been forthcoming.

The adopted son, in other tribes at least, becomes a member of his adoptive father's family and is entitled as such to succeed collaterally in that family.

QUESTION 46.—*May a man make an adoption if his own son is alive but disqualified from succession by some legal impediment, e.g., change of religion?*

ANSWER.—He can.

QUESTION 47.—*How can adoption be annulled?*

ANSWER.—All tribes agree that change of religion invalidates an adoption, the Rájputs of Pánipat add impertinence and disobedience to the adoptor as a sufficient ground for revoking it, and all other tribes state that if the adopted son becomes a *fagir* the adoption is annulled.

CHAPTER VII.

MINORS.

QUESTION 48.—(*a*). *Who is the proper guardian of a minor?*

(*b*). *Can a guardian be appointed by the parents in their lifetime?*

(*c*). *Can a guardian dispose of the hand of his ward, if a girl, in marriage?*

ANSWER.—All tribes agree that parents are at liberty to appoint whom they will as guardian of their children: but in default of such appointment the nearest relative becomes guardian and is responsible for the marriage of his ward. Among Rájputs and Sayeds, but in no other tribe, the mother is the natural guardian of her fatherless children.

Note to Question 48—

The mother is, however, in fact sometimes appointed guardian even among Játs, *e. g.*—

(*i*) Mussammat Dharmo, a Játni of Raipur, became guardian of her son, Shiv Ràm, *vide* mutation No. 10 of June 3rd 1899.

(*ii*) In Bazida Jàtàn, Mussammat Mathri became guardian of her two sons, *vide* mutation No. 13, dated 30th December 1888.

QUESTION 49.—*Who is entitled to the custody of a married girl during her minority, if her parents be—*

(*a*) *alive,*

(*b*) *dead?*

ANSWER.—With the exception of the Sayeds of Jalpahar and Sayedpura who state that in case (*b*) the custody of the girl devolves upon the parents of her husband, all tribes agree that the girl should live with her own parents or kindred.

QUESTION 50.—(*a*) *Does remarriage annul the right of a widow to be guardian to her child?*

(b) If so, will subsequent widowhood revive the right?

ANSWER.—Remarriage involves forfeiture of the right of guardianship and the right once forfeited cannot be renewed.

QUESTION 51.—*Can a guardian alienate the property of his ward by sale or mortgage,*

(a) for the maintenance of the ward,

(b) for payment of his father's debts?

ANSWER.—The Ràjputs of Pánipat state that in both cases for maintenance, payment of debts, and for marriage expenses a guardian may mortgage but not permanently alienate the estate of his ward. Gujars and Aráins state that he can mortgage for any object which is genuinely to the benefit of the ward. Other tribes state that an estate in ward can be mortgaged only for marriage expenses.

QUESTION 52.—*Can a minor acquire or sell property independently of his guardians?*

ANSWER.—Except by inheritance a minor cannot acquire property and in no case can he sell without the consent of his guardians.

QUESTION 53.—*Who has the prior claim upon the custody of an illegitimate child, the mother and her relations or the father and his?*

ANSWER.—All tribes agree that the care of an illegitimate child devolves upon the mother, and failing her upon the father and his kindred.

CHAPTER VIII.

WILLS AND GIFTS.

QUESTION 54.—*Can a proprietor make a gift of land to his daughter or to his son-in law, by way of dowry* (jahez)—

(*a*) *in the presence,*

(*b*) *in the absence,*

of male issue ?

ANSWER.—The Rájputs of Pánipat town and the Sayeds of Sayedpura assert that a gift can be made either orally or in writing whether there be male issue or not.

All other tribes reply in the negative.

Note.—This question was twice referred to the Rájputs of Pánipat town, but they insist on the answer given.

While, however, asserting that such a gift is not illegal, they admit that no instances can be quoted except of a single case which is alleged to have occurred before 1842, and even then the consent of the collaterals was obtained. The answer recorded, therefore, can have little weight save as an expression of the opinion of the leading Rájputs of to-day.

QUESTION 55.—*Can* (*a*) *a proprietor* / (*b*) *the widow of a proprietor* } *in default of male issue alienate real property in favour of a daughter during his or her lifetime.*

ANSWER.—Among the Rájputs of Pánipat a man but not his widow may make such a gift by a deed in writing, and the Sayeds of Sayedpura say that they have a similar custom but that the consent of collaterals is necessary. All other tribes answer the question in the negative.

QUESTION 56.—*Can a proprietor exclude any of his natural heirs from inheritance ?*

ANSWER.—The Rájputs of Pánipat state that a widow cannot deprive any one of their rights, but that a male proprietor may direct the succession to his acquired estate, but not to his ancestral property. Aráins profess that a proprietor has full power over the succession to his estate. All other tribes answer the question in the negative.

QUESTION 57.—*To what extent is a proprietor entitled to bequeath property by testamentary disposition ?*

ANSWER.—Rájputs of Pánipat town followed by the Sayeds of Baras, Panauri, Jalpahar and Sayedpura state that the entire estate may be disposed of by will in favour of a male or female relative by a male proprietor. Rors state that acquired property only may be disposed of by will by any proprietor.

Bairágis and Kambohs state that a male proprietor may direct the disposition of all his property after his death by oral or written directions. No other tribe admits testamentary dispositions.

Note.—These answers are in substance the same as those recorded at last settlement and the tribes have refused to alter them. It is, however, difficult to believe that the custom would be recognized as binding in a Court of Law. The only instance that could be found was the case of Nazir Ali Khan, son of Fatteh Ali Khan, who, in default of issue and in the presence of a widow and a step-brother made a will in favour of his real brother, *vide* records of last settlement (Pánipat, Taraf Rájput). But the case is hardly strong enough to establish a custom. For while the widow would probably not contest the will if properly maintained, the claim of the step-brother was inferior to that of the beneficiary under the will.

QUESTION 58.—*To what extent and under what conditions can a valid gift of real property be made* inter vivos ?

ANSWER.—The Rájputs of Pánipat town agree that a male proprietor can make a gift of part or all his estate to a collateral of either sex: provided that an instrument in writing be drawn up. The family of Hayát Khán, and the Sayads of Jalpahar and Sayedpure state that both male and female owners are entitled to gift away land.

Rors state that any owner can make to a daughter a gift of acquired property but not of ancestral estate. The Aráins state that male proprietors can by an instrument in writing make a valid gift of part or all their estate of either description.

Bairágis state that self-acquired estate may be gifted without restriction but not ancestral property. All other tribes state that gift is always illegal.

Note to Question 58.—The custom is in general supported by the following instances : —

Illustration 1.—Aráins of Karnal.

Muhammad Ibráhím, Aráin, of Karnal, gifted 7 *bighas* 10 *biswas* of ancestral land in favour of one Azím-ud-dín, his sister's son, and son-in-law, to the exclusion of his sons, *vide* Mutation No. 1456 of 1904.

Illustration 2.—Aráins of Karnal.

One Allah Bakhsh made a gift of 38 *bighas* 9 *biswas* of ancestral land in favour of the sons of Ghulam Muhammad to the exclusion of his daughter *vide* mutation No. 1311 of 1903.

Illustration 3.—Rors of Karnal.

One Nathu gifted 31 *bighas* 19 *biswas* of mortgaged land to Deotia and others, who were in no way related to him. The land

was freed from a mortgage of Rs. 200 by the donee; and the transaction thus partook of the nature of a sale, the donor losing the land but being freed of the burden of the debt, *vide* mutation No. 51, dated 22nd April 1907.

Illustration 4.—Rors of Jhinwarheri.

Mussammat Jiwo, wife of Daswandi, of Jhinwarheri, gifted 16 *bighas* 5 *biswas* land in favour of her daughter's son, Naurang, son of Achpal, see mutation No. 13 of 1908.

Illustration 5.—Bairágis of Goli.

Badám Bairági secured by gift 8 *bighas* 9 *biswas* in Bhusli (Karnal) from the *shamilat* of the village held jointly by Bairágis and Játs; see mutation No. 118, dated 25th June 1906.

Illustration 6.—Gadis of Kaleri.

APPEAL No. 349 AND APPEAL No. 289 OF 1889.

Allahdia and others versus *Buali and others.*

Gadis of Kaleri—gift to step-sons.

The plaintiffs were collaterals of Muhammada, a Gadi of mauza Kaleri, tahsil Karnal. The defendants were his step-sons, and resisted the claim of the collaterals, pleading an adoption and that they had been brought up as sons, and as to part of the lands in suit relying on a gift from Muhammada. The first Court decreed the claim, except as to the gifted land. The Divisional Judge as to the gift gave judgment as follows :—"As for the gift there cannot be any doubt that, by the general custom of this part of the Punjab, a gift to step-sons is invalid. It was, therefore, incumbent on defendants to establish its validity. At the utmost they proved two instances of gifts to daughter's sons. No instances of gifts to step-sons could be proved, because it was generally admitted that none were known to have been made. The parties are agriculturists and they never claimed to be governed by Mohammedan Law. I find the gift was not valid." The result was that the Divisional Judge decreed the entire claim.

But *vide, per contra,* Appeal No. 616 of 1906, quoted in question 27, Chapter III.

Illustration 7.—Kambohs of Kambohpura.

APPEAL No. 38 OF 1889.

Jas Ram and others versus *Mussammat Shibbi.*

Kambohs of Kambohpura. Reversion of land to grantee's family.

Defendant was the daughter of Gulab, the last male holder. The plaintiffs claimed the land situate in mauza Kambohpura, tahsil Karnal, on the ground that an ancestor of theirs had gifted the land to an ancestor of Gulab and that as Gulab had died without heirs, the land reverted to plaintiffs. The lower Court while admitting that such had been the practice in the village distinguished the present case on the ground that deceased here had left a daughter who was a widow and had been

living with the deceased for 24 years. He accordingly dismissed the suit declaring plaintiffs to be entitled on the death of the defendant. On appeal the defendant gave up half the land to plaintiffs and agreed to hold the remainder on the usual life tenure with reversion to the plaintiffs. The parties were of the Kamboh caste.

Illustration 8.—Nánbáis of Pánipat.

APPEAL No. 258 OF 1890.

Kala versus *Imam-ud-din and others.*

Nánbáis of Pánipat—Mohammedan Law.

Plaintiff claimed as son of Bakhsha deceased for possession of the immoveable property of Bakhsha, which had been gifted by Bakhsha to the defendant. The parties were Nánbáis of Pánipat. The Sub-Judge dismissed the suit on 3rd June. The Divisional Judge after a remand found plaintiff not to be the legitimate son of Bakhsha's, and found that no custom had been proved under which the gift could be held invalid, parties following Mohammedan Law. He accordingly dismissed the appeal on 18th November 1890.

Illustration 9.—Rájputs of Urlána Khurd.

APPEAL No. 131 OF 1895.

Khawani and others versus *Mussammat Fahiman and others.*

Rájputs of Urlána Khurd—Donors Reversioners—Alienation by donee's widow.

The parties were Rájputs of Urlána Khurd, tahsil Pánipat. The plaintiffs as descended from the donor's family, claimed a declaration as reversioners in respect of a gift made by Mussammat Rahiman, widow of the last male owner in the donee's family. The Divisional Judge dismissed the suit holding that plaintiffs had failed to prove a custom entitling them to object. On appeal to the Chief Court (see Chief Court Civil Appeal No. 1102 of 1895) it was decided on 7th December 1897 in favour of plaintiffs. The material portion of the Chief Court's judgment is the following :—

"It is not and cannot be alleged that any special custom excluding plaintiffs or giving widows an unregistered power of alienation has been proved."

QUESTION 59.—*Is a gift to a daughter or daughter's son valid ?*

ANSWER.—Among the Rájputs of Pánipat town and the Sayeds of Jalpahár such a gift is valid if made by a male proprietor, and the Sayeds of Sayedpura state that a gift is valid if made to all the daughters in equal shares.

Rors state that such a gift can be made out of acquired property only, and the Arains admit it if made in writing. All other tribes deny the validity of such gifts.

Note.—This custom does not, however, bind non-agricultural tribes.

Illustration 1.

APPEAL No. 7 OF 1891.

Hasna and others, plaintiffs, and Dula and others, defendants.

Gadis of Kaleri—Gift to daughter's sons.

The parties were Gadis of mauza Kaleri, tahsil Karnal, and plaintiffs claimed possession as heirs of Lâhia, deceased, who had gifted the land to the defendants, his daughter's sons. The first Court dismissed the suit. On appeal the Divisional Judge gave judgment as follows :—

"From the evidence of plaintiffs' witness it appears that the village is inhabited by a variety of tribes, and the *onus* of proving a custom in restriction of alienation was therefore rightly laid on the plaintiffs, and they have not produced a single instance in proof of such custom. As to ground 2, all that need be said is that, if deceased had an unrestricted power of alienation, he was just as much at liberty to alienate his land gratis as for consideration, and it is therefore immaterial whether consideration passed or not." The Divisional Judge accordingly dismissed the appeal on 2nd February 1891.

QUESTION 60.—*Is a gift made in default of issue revoked by the subsequent birth of children to the donor ?*

ANSWER.—The Rájputs of Patti Hayat Khan, the Sayeds of Bárás, Pánauri, Jalpahár and Sayedpura, the *Arains* and the Moghals state that such a gift is revoked by the birth of a son. The Bairágis, however, state that, if possession has been delivered, the gift is irrevokable. All other tribes deny the validity of such gift at all.

QUESTION 61.—*Is delivery an essential feature of a gift ?*

ANSWER.—All tribes which admit the custom of gift at all, say that it is so.

QUESTION 62.—*Can a gift of land be made for charitable usages ?*

ANSWER.—In Pánipat town, the Rájputs can give in charity of their self-acquired property only. The Játs, Tagas and Gujars have a custom whereby the produce of a field not exceeding a *kacha bigha* can be assigned to a *dhohlidár*, but they say that the land itself does not pass to a *dhohlidár*. Beyond this gifts are not permissible. Rájpúts, Rors, and Arains place no restriction on gifts from acquired property. Brahmins are of divided opinion as to whether there is a restriction on gifts from ancestral property. Rors state that a *dhohli* of 1¼ *kacha bigha* can be made from the ancestral estate, Arains say that ancestral property cannot be touched.

Glossary of Vernacular words in the Riwaj-i-am of the Panipat Tahsil and Pargana Karnal of the Karnal Tahsil.

Vernacular.	English.
Atta Sata	See note to question 7.
Bhat and bail	See note to question 9.
Bhon Bhai Ghar Jowai	Bhon means, land.
	Bhai „ brother.
	Ghar „ house, &c.
	Jowai „ son-in-law.
	That is the landed property goes to the collaterals and chattels to the son-in-law.
Cashca	A red line drawn on the forehead of the betrothed boy by a Brahmin.
Chau-goda	Chau means four and goda means connection; the connection of four families in marriage. See note to question 7, Chapter I.
Chadar andazi	Cloth throwing. One of the forms by which widows can be remarried.
Chundavand	Succession *per stirpes*, according to the number of wives.
Dewar	A brother-in-law who is younger than the husband.
Dharam Sagai	The giving of a girl in marriage without any compensation or demanding of a girl in exchange.
Dhohlidar	A holder of a small plot of land granted, usually for religious purposes, free of revenue by the zamindars.
Girhisti faqir	A sect which admits marriage. *Girhast* a Sanskrit word meaning home.
Got	Sub-caste.

Vernacular.	English.
Ghar dalna	Ghar means home. Dalna means to allow one to enter. To give protection to a woman by marrying her without ceremonies.
Ghair	Alien, foreign.
Gailar	Step-son.
Ghar Jowai	A son-in-law who takes up his residence with his father-in-law.
Havan	Sacred fire.
Iddat	According to Muhammadan Law is the period (4 months and 10 days) after which a widow can remarry after the death of her former husband, provided she be not pregnant.
Jhar Phunki Phera	Jhar means a bush or tree, Phunki burning, and Phera circling. Circling round a burning bush as a ceremony to validate marriage.
Jaddi	Belong to common ancestor.
Jahez	Dowry.
Kanyadan	Kanya means girl and, dan means giving. The giving of a girl for marriage without any exchange or re muneration.
Karewa	Remarriage by widows.
Khata	A holding of land.
Kaum	A caste.
Lag...	A cash present made at the Tika Sagai by the boy's people to the girl's envoys, lagi.
Mehr	Dower.
Neota	See note to question 9, Chapter I.
Phera	A sacred ceremony performed by the Hindus at the marriage time round a sacred fire. Phera means circling.
Pagvand	Succession *per capita*.
Pichhlag	Step-son.
Rupna Sagai	Rupna means a rupee and thus Rupna Sagai means the giving of a rupee by the barber of the girl's family to the boy betrothed.

Vernacular.	English.
Shara	The body of Mohammedan Law.
Santh Sagai	See note to question 7, Chapter I.
Shadi	Marriage.
Thamba	A group of villages, the inhabitants of which trace descendant from a common ancestor.
Tikka Sagai	Various forms of ceremonies to be observed to make a betrothal valid, such as interchange of presents.
Trigoda	Tri means three and goda connection, when the boys and girls of three families are married in each other (see note to question 7,) Chapter I)..

Comparative list of questions.

Reference to		Reference to	
The new English edition prepared in 1909.	The Vernacular edition of Mr. Ibbetson's Settlement.	The new English edition prepared in 1909.	The Vernacular edition of Mr. Ibbetson's Settlement.
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PUNJAB CUSTOMARY LAW.

Vol. VIII A.

TAHSIL PANIPAT AND PARGANA KARNAL, DISTRICT KARNAL.

Comparative list of questions to the Riwaj-i-am of the Panipat Tahsil and Pargana Karnal of the Karnal Tahsil.

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The Vernacular edition of Mr. Ibbetson's Settlement.	The new English edition prepared in 1909.	The Vernacular edition of Mr. Ibbetson's Settlement.	The new English edition prepared in 1909.
1	1	25	32
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8	Omitted.	32	25
9	10	33	26
10	2	34	Omitted.
11	11	35	27
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13	11	37	Omitted.
14	11	38	
15	See 25 and 22	39	30
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