royal share of the revenue and not necessarily of the soil unless words suitable to indicate a grant of the soil are used in the document evidencing the grant. I have nothing to add to what I have stated in the last but one paragraph of my judgment in *Amrit* v. *Hari*[1] as regards the effect of certain observations in *Suryanarayana* v. *Patanna*[2] on the view so far accepted in this Presidency beyond this that the *ratio decidendi* in the recent case of the *Secretary of State for India in Council* v. *Srinivasa Chariar*[3] appears to me to support that view.

Decree confirmed.

J. G. R.

[1] (1919) 44 Bom. 237. [2] (1918) L. R. 45 I. A. 209.
[3] (1920) L. R. 48 I. A. 56.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

MOHANSING, MINOR, BY HIS GUARDIAN MOTHER BAI RAJU (ORIGINAL DEFENDANT), APPELLANT *v.* DALPATSING KANBAJI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS*.

1921. *December* 7

Indian Evidence Act (I of 1872) section 32, clause 6—Family pedigree—Book kept by a chronicler—Admissibility of the book to prove family pedigree.

The plaintiff claimed to recover the plaint property as the reversionary heir of one D. For the purpose of showing his relationship to D, the plaintiff relied upon a pedigree deduced from the evidence of a witness who was a chronicler and who produced a book which he asserted had been kept by himself, his father and his grandfather recording the events of various Rajput families of which the family in suit was one. It was contended that the entries in this book were inadmissible in evidence :

Held, that if the Court was satisfied that the members of the family in question depended upon the witness to keep a record of the family events in

*First Appeal No. 209 of 1920.

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the book, the entries therein would be admissible in evidence under clause 6 of section 32 of the Evidence Act.

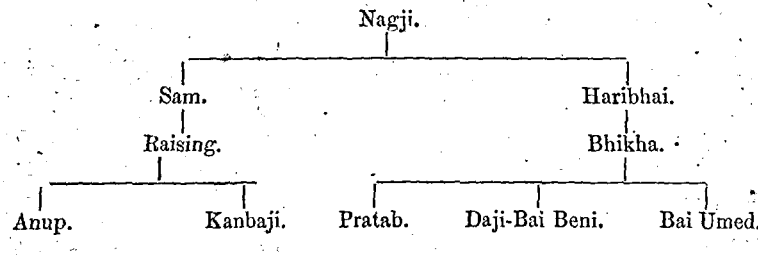
FIRST appeal against the decision of M. H. Wagle, First Class Subordinate Judge of Surat.

Suit to recover possession.

The property in suit originally belonged to one Daji. After his death his widow, Bai Beni, inherited the same. She died in 1915. The plaintiff Kanbaji as the reversionary heir of Bai Beni sued to recover possession from the defendants, to whom Bai Beni had sold the property in 1889.

The defendants contended that the property had been sold for a family necessity and further denied that the plaintiff was the reversionary heir of Daji.

Kanbaji died pending the suit and his heir, who was brought on record, relied, in support of his claim, upon a family pedigree as follows :—



This pedigree was prepared on the information obtained from a Barot (chronicler), witness Mohansing (Exhibit 84). Mohansing produced his book, which he asserted had been kept by himself, his father and his grandfather, recording the family events of various Rajput families of which the family in suit was one. All the Girasia Rajputs relied upon the book for correct information about their ancestors.

The Subordinate Judge held that the book produced by Mohansing was admissible in evidence under

section 32 of the Indian Evidence Act, that the plaintiff was the reversionary heir of Daji, and that the sale by Bai Beni was not effected for a family necessity. The suit was therefore decreed.

The defendant appealed to the High Court.

Coyajee, with *G. N. Thakor*, for the appellant.

B. J. Desai, with *N. K. Mehta*, for the respondents.

MACLEOD, C. J. :—This suit was filed by the plaintiff to recover the plaint property as a reversionary heir of one Daji Bhikha on the death of his widow from the defendant to whom the property had been sold by Bai Beni in 1889. The defendant disputed the claim of the plaintiff as being the nearest reversionary heir of Daji. But assuming that Kanbaji was a relation and agnate of Daji, the defendant could not point out the existence of any other agnate or relation except Daji's sister's daughter, Bai Hari. The defendant, therefore, attacked the pedigree on which the plaintiff relied. That pedigree had been deduced from the evidence of one Mohansing who produced his book which had been kept by himself, his father and his grandfather, recording the family events of various Rajput families of which the family in suit was one. With regard to this witness who was acquainted with this family and who kept the record of family events, the Judge said :—

"These entries are made in the course of the tour made by these chroniclers, from the information given by the Yajmans, though the names of the informants are not given. Still admittedly all the Girasia Rajputs rely upon this book for correct information about their ancestors and I must accept their correctness and hold that it is admissible, either under clause 2 or 6 of section 32 of the Indian Evidence Act. Kanbaji and Daji both being dead, the entries can be held to be relevant under clause 6."

We see no reason to differ from that opinion if the Court was satisfied that the witness in a sense

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was a professional man or a person whose business it was to keep a book of this kind for the advantage of these Rajput families. There is no reason why, if the book is shown to have been kept in the ordinary course of business, it should not be admitted as evidence. Even if that were incorrect, still, sub-section 6 of section 32 enables a family pedigree to be admitted in evidence so long as the members of the family depend upon a particular person like the witness to keep a record of the family events before them. We think, therefore, the Judge was entitled to rely upon Mohansing's evidence fortified by his book. Once the book was proved, then it is clear that Kanbaji was the agnate of Daji and it is not suggested that there was any other agnate in existence at the present time. He would, therefore, be entitled to succeed as a reversioner on the death of Bai Beni unless the defendant can show that in 1889 the debt was for legal necessity. The Judge said :—

> "In the deed the property is stated to be sold for debts. Particulars of debts are not given, but attempt is made to show that at least two creditors were satisfied. It is said that two creditors were paid Rs. 900 and Rs. 800 respectively. But the evidence is unsatisfactory and no reliance can be placed on it. There is no writing about the debts and such oral evidence can be prepared at any time."

On reading the evidence admittedly sought to prove the payments, there can be no doubt that the learned Judge was right in his appreciation of it. Because the sale deed passed thirty years ago by a Hindu widow to an outsider could not be attacked until the death of the widow, it may seem hard that the defendant purchaser should be deprived of this property. But still the law in this country is perfectly well known that a widow cannot sell more than her own interest unless there is legal necessity, and the onus has rightly been placed on the purchaser

to prove that the sale was for necessity. Therefore it was desirable that at any rate the debts which it was suggested were paid off out of the purchase price should have been recited in the deed and it was not sufficient that there should be merely a recital that the property had been sold for debts. The learned Judge pointed out :—

"There is absolutely nothing to show that Daji was really indebted. He possessed considerable land, both at Delada and Dholgam. It is probable that the suit lands were sold because the widow who resided at Dholgam could not manage them. On the evidence I am not prepared to hold that the sale was for necessity."

In any event it is impossible to come to the conclusion that the learned Judge was wrong in his appreciation of the evidence. The defendant has also failed to prove that his father spent about a thousand rupees on improvements as alleged in this case, and as the revenue of the land is said to be Rs. 320 a year, we think the defendant must have recouped the money which his father spent in purchasing the property with interest thereon. The appeal fails and must be dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

THE LAXMI BANK, LIMITED, POONA (ORIGINAL OPPONENT No. 6), APPELLANT *v.* RAMCHANDRA NARAYAN APTE (ORIGINAL APPLICANT), RESPONDENT*.

1921. *December* 9.

Provincial Insolvency Acts (Act III of 1907), sections 11 14 and 15, (Act V of 1920), sections 10 and 24—Debtor's petition—Inability to pay debts—Practice.

An issue whether the petitioning debtor has made a true and full disclosure of his property is not pertinent at an inquiry under section 15 of the Provincial

* Second Appeal No. 706 of 1921.