Order.—This is understood to be a reference by the Commissioner of Rawalpindi under S. 100, Punjab Tenancy Act, though this is not precisely stated in the order of reference. The Chief Court is asked to register the appellate decree of the Collector, dated 9th April 1913, as the decree of a civil Court. By that decree plaintiff has been allowed in full the sum of Rs. 160 claimed.

I find it difficult to follow the argument of the learned Commissioner. As at present advised I am of opinion that the parties to the suit in question stand in the relation of landlord and tenant, and that the suit is covered by Cl. (i), S. 77 (3), Tenancy Act, and has therefore been properly heard in the revenue Courts. The facts are however of an unusual nature and I do not wish to express too positive a view on the point.

But, even if it be assumed that the Commissioner is right on that point, I cannot agree with him that the parties would not be prejudiced by the course which he suggests. The suit, if heard by the civil Courts, would be a Small Cause under Rs. 500 in value and under S. 41 (2), Punjab Courts Act, as amended in 1912, no second appeal will lie. The effect of registering the Collector's decree would therefore be to deprive the defendants of all further remedy as it can hardly be said that such material irregularity is disclosed as to justify interference by revision under S. 70. This result can scarcely have been cotemplated by the Commissioner who has himself indicated doubt as to the correctness of the Collector's decision on the merits.

Clause (2), S. 100, Tenancy Act, gives the Chief Court power to act only where it appears that the parties have not been prejudiced by a mistake as to jurisdiction. If they have been prejudiced, registration is inadmissible.

The reply to the reference must therefore be that the Chief Court cannot intervene. The records will be returned to the Commissioner for disposal of the appeal before him in whatever manner he may consider proper.

If notwithstanding what has been said above, he should on further consideration hold that the revenue Courts have no jurisdiction, it may be open to him to set aside the decrees of both the lower revenue Courts and to return the plaint for presentation in the civil Court having jurisdiction.

R.M./R.K. *Reference rejected.*

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RATTIGAN AND BEADON, JJ.

Mt. Rup Dasi and *others*—Defendants—Appellants.

v.

Ram Dhan and *others* — Plaintiffs—Respondents.

First Appeal No. 1190 of 1910, Decided on 28th January 1914, from decree of Dist. Judge, Kangra, D/- 6th August 1910.

(a) Custom (Punjab)—Succession—Presumption of collaterals in fourth degree of deceased having preferential right of succession to daughter exists.

The collaterals in the fourth degree of a deceased sonless proprietor would presumbly have a preferential right to succeed to his property, and it would be for the daughter of the deceased and her sons to prove affirmatively a special custom entitling them to succeed in preference to the collaterals. [P 82 C 1]

(b) Custom (Punjab)—Daughter-in-law of deceased proprietor is entitled to maintenance only.

The daughter-in-law of a deceased proprietor cannot as such claim a life-estate in his property upon his death. She is only entitled to maintenance. [P 82 C 1, 2]

Muhammad Iqbal—for Appellants.

Shadi Lal and *Tek Chand* — for Respondents.

Judgment.—The facts of the case, the pedigree-table of the parties and the history of the previous litigation between them are set forth in detail in the judgment of the District Judge, Kulu, and in view of the fact that only three points have been urged before us on this appeal, it is unnecessary for us to recapitulate them. The points argued before us are as follows:

(1) Whether plaintiffs have been rightly found to be legitimate?

(2) Whether, if legitimate, plaintiffs who would then be collaterals related in the fourth degree to the deceased, Teju, are entitled to succeed to his property to the exclusion of Teju's daughter's sons, Shet Ram and Chini Ram?

(3) Whether Mt. Rup Dasi, the widow of Teju's son, Ram Pershad, who predeceased his father, is entitled to anything more than maintenance?

In the grounds of appeal it is urged that the lower Court erred in holding that the defendants were not entitled to rely on a deed executed by Teju as a deed

of gift and that the decision in the previous case with reference to the defendant's rights under the said deed was not res judicata so far as that deed related to the question of gift. This point was not urged before us by appellants' counsel, and rightly so; for it is quite clear from the judgment of the Divisional Judge in the previous case that the deed was cancelled as a whole. As regards the three points before us we are satisfied that the conclusions of the District Judge are correct. The legitimacy of plaintiffs cannot reasonably be challenged in view of the admitted facts that they were allowed to succeed as sons to the property of their father, Lachman, and that they have also succeeded to the property of their collateral, Bholu, and also to property left by Narpat, one of the three sons of the common ancestor, Jai Rath. In face of these facts it is idle to refer us to vague statements made by elderly witnesses such as Jotu with reference to events that occurred sixty or seventy years ago. Assuming, then, that plaintiffs are legitimate, they as collaterals in the 4th degree, would presumably have a preferential right to succeed to property left by Teju, and it would be for the daughter of Teju and her sons to prove affirmatively a special custom entitling them to succeed in preference to plaintiffs. Admittedly, defendants are unable to give evidence of any instance of a daughter succeeding in preference to near collaterals such as plaintiffs' whereas, plaintiffs have given evidence with regard to their succession to the property of their collateral, Bholu, who left a daughter, Mt. Gauri Datt. This lady has given evidence in support of plaintiffs' allegations (see p. 52 of the paper book.

As regards Mt. Rup Dasi we fail to see how she can claim to be entitled to a life-estate in the property. Plaintiffs have contended that she was not the lawful wife of Ram Pershad, and we notice that in the memorandum of appeal she is described, in English, as the kept widow of Ram Pershad and, in the vernacular, as Madkhula Beva, or the mistress of Ram Pershad. It is unnecessary for us to consider whether it is, or is not, proved that she was lawfully married to her late husband, as we are quite clear that she cannot, as the daughter-in-law of Teju, claim a life-estate in the latter's property upon his death. She has been granted maintenance by the District Judge, and in our opinion, this is all that she is entitled to.

Plaintiffs filed cross objections with reference to the award of costs by the District Judge, but these objections have not been pressed. For the reasons above given we dismiss this appeal with costs. The cross objections are also dismissed, but we make no order as to costs with regard to them.

R.M./R.K. *Appeal dismissed.*

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KENSINGTON, C. J.

Amar Singh—Defendant—Petitioner.

v.

Karam Singh—Plaintiff—Respondent.

Civil Revn. Petn. No. 782 of 1913, Decided on 19th February 1914, from decree of Small Cause Court Judge, Lahore, D/- 30th April 1913.

(a) Master and Servant—Dismissal from service—Dismissal for refusing to work on Sunday having agreed to do so, is justified though harsh—Penalty of 15 days pay was not allowed.

Sundays are customary holidays, but it is open to any employer to stipulate to the contrary, and if his servants having accepted service on these conditions refuse to abide by their terms, they must take the consequences.

Where a servant, who was acquired according to the rules of his service to work on a Sunday, refused to do so, and was summarily dismissed:

Held: that the master did not act illegally in summarily dismissing the servant, but he certainly acted harshly and the prescribed penalty of forfeiture of pay for 15 days could not be reasonably exacted. [P 83 C 1]

(b) Contract Act (9 of 1872), S. 74—Court has power to decide whether penalty is justified or not.

The civil Courts have ample discretion to determine in any particular case whether such penalty may be justified or not. [P 83 C 1]

(c) Master and Servant — Dismissal from service—When dismissal justified though harsh—Servant not entitled to damages.

Where the master is within his rights in dismissing the servant in the middle of the month even though he acts harshly, the Court is not justified in requiring him to pay the servant by way of damages for the remaining days of the month. [P 83 C 1]

Jai Gopal—for Petitioner.

Judgment.—The facts of this case are that plaintiff was employed in the defendant's printing press on a pay of Rs. 19 a month. By the printed rule for employees in the press they are required to work on holidays, including Sundays, in case of necessity, with an allowance of overtime pay if required to do this