

## SMALL CAUSE COURT REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Beverley.  
 RAM CHAND SEN (PLAINTIFF) v. AUDAITO SEN AND SRINATH  
 SEN (DEFENDANTS).\*

1884  
 July 30.

*Marriage, Contract for—Consideration money, Suit for return of—  
 Public Policy.*

The defendant in consideration of Rs. 100 promised to give his minor daughter in marriage to the plaintiff; the defendant failed to fulfil his part of the promise, and the plaintiff brought a suit to recover the money paid, as consideration for the promise.

*Held*, that such a suit would lie.

*Juggeshur Chuckerbutty v. Panch Couree Chuckerbutty* (1) approved.

*Query*.—Whether the Court could have enforced the payment of the Rs. 100 to the father of the minor as against the person engaging to marry the minor.

THIS suit was brought to recover Rs. 100 alleged to have been paid by the plaintiff to defendant No. 1, Audaito Sen, in consideration of a promise made by the defendant Audaito to give his daughter in marriage to the plaintiff. The defendant Srinath Sen was the brother of the defendant Audaito, and it was alleged that the money was received by them both jointly. Defendant No. 1 failed to give his daughter in marriage to the plaintiff. The defendants, *inter alia*, contended that the agreement in question was illegal, and, therefore, no action was maintainable upon it.

The Judge of the Small Cause Court gave the following judgment:—

"I think that the suit is not maintainable. The money sought to be recovered was admittedly paid as *pon*, *i.e.*, as price for the promised marriage; the agreement is illegal and void, being contrary to public policy. To hold that an action will lie upon such an agreement would lead to the encouragement of the vicious practice of selling girls by their parents for the purpose of marriage. The practice no doubt

\* Small Cause Court Reference No. 11 of 1884, made by Baboo Gonesh Chunder Chowdry, Judge of the Small Cause Court, Midnapore, dated the 26th June 1884.

obtain to a great extent in this province. But that, I think, is no reason why a Court of justice and equity should recognise, and give effect to it. It cannot be doubted for a moment that the practice is injurious to the public good. A parent who would give his daughter in marriage for *pon* would not, as a rule, care to consider the fitness, or the unfitness of the match, but would give preference to whomsoever pays the highest price."

"The case reported at page 154, 14 W. R.—*Juggeshur Chuckerbutty v. Panch Cowree Chuckerbutty*—is cited by the pleader for the plaintiff as authority, in support of his contention, that the suit will lie. But it seems that that case is distinguishable from the present case. In that case, the money sought to be recovered, appears to have been paid, not to the legal guardian of the girl, but to her brother; her mother being her legal guardian. But though there is this difference in the features of the two cases, the question seems to be not altogether free from doubt. But as the pleader for the plaintiff has applied for a reference to the Honorable High Court, I respectfully submit the following point for decision:—Whether a suit will lie for recovery of the money paid as *pon* to the defendant, in consideration of his promise to give his minor daughter in marriage to the plaintiff?"

"The suit is dismissed contingent upon the opinion of the High Court on the point referred."

No one appeared on the reference for either party.

Judgments were delivered by GARTH, C.J. and BEVERLEY, J.

GARTH, C.J.—In this case I have great doubt, whether the opinion of the Judge of the Small Cause Court is not correct; and if we were now asked to enforce an agreement to pay *pon* to a girl's father, in consideration of his giving her in marriage, I should have wished to refer the question to a Full Bench.

But the facts, as I understand them, are these:—

The plaintiff paid Rs. 100 to the defendant No. 1, in consideration of his giving his daughter to him in marriage; and the defendant No. 2, who is a brother of the defendant No. 1, was a party to the contract.

After the money was paid, the defendant No. 1 failed to fulfil his promise, and gave his daughter in marriage to some one else,

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The plaintiff now seeks to recover back his money, and the defendants attempt to take advantage of the illegality of the contract by way of a defence to the claim.

Under these circumstances, I consider that the case referred to, *Juggeshwar Chuckerbutty v. Panch Cowree Chuckerbutty* (1) is directly in point, and apart from the question whether the contract is illegal, the justice of the claim is entirely with the plaintiff.

Upon the authority of that case, therefore, and because it is manifest justice that the defendants should not be allowed to retain the money, I agree with my learned brother that the claim should be decreed.

Had the question been, whether, as against the plaintiff, we could enforce payment of the Rs. 100 to the defendant No. 1, I should have doubted very much whether we ought to do so.

In England, a bargain of this kind, for payment of money to a father, in consideration of his giving his daughter in marriage, is considered to be a marriage brokerage contract, and illegal as against public policy see *Keat v. Allen* (2) and other cases cited in *Abbison on Contracts*, 5th Edition, p. 742, 7th ed., 1017.

And without going the length of saying at present that I consider such contracts to be illegal in this country, I certainly should be disposed, as at present advised, to hold that they were so far void, as to be incapable of being enforced by the rules of equity and good conscience.

In the present case the plaintiff's suit will be decreed.

BEVERLEY, J.—I think that the suit will lie to recover the money in question. There is nothing immoral in the contract so far as I can see. No doubt the purchase or hire of a minor girl for purposes of prostitution, or concubinage, is an immoral act, but where a legal marriage is in contemplation, the payment of money as a consideration is in accordance with the customs of the country, and therefore, in my opinion, not opposed to public policy. Besides the case cited by the Judge from 14 W. R., 154, I find that a similar view was also expressed by this Court in the case of *Ramee Lallun Monee Dossee v. Nobin Mohun Singh* (3).

(1) 14 W. R., 154. (2) 2 Vernon's Rep., Pt. 2, 558. (3) 25 W. R., 32.

No doubt marriage brokerage contracts are illegal in England, but the reason of this is, that they are deemed to interfere with the free consent of the parties, which is an essential condition in the English marriage contract. But in India the consent of the parties has rarely, if ever, anything to do with the marriage contract, which is generally arranged by the parents or friends of the parties before they themselves are of an age to give a free and intelligent consent. It is opposed to English ideas of public policy that a Kulin Brahman should be paid to marry any number of Kulin girls, but so long as it is the recognised custom of the country, and is not prohibited by law, I think we should be scarcely justified in holding such marriage contracts to be illegal.

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*Decision reversed.*

## APPELLATE CIVIL.

*Before Mr. Justice Prinsep and Mr. Justice Macpherson.*

KOYLASH CHUNDER SEN (CLAIMANT) PETITIONER v. KOYLASH  
CHUNDER CHAKRABARTI (DECREE-HOLDER) AND MOHENDRO NATH  
BOSE (JUDGMENT-DEBTOR) OPPOSITE PARTIES.\*

1884  
August 26,

*Civil Procedure Code—Act XIV of 1882, ss. 280, 281—Attachment—Satisfaction of decrees by private sale—Purchaser—Subsequent attachment—Claim under s. 278.*

*A* and *B* attached in execution of their decree property of *C* and his two brothers, their judgment-debtors. Subsequently *D* obtained a decree against *C* alone, and on the 11th January 1884 applied for attachment of the one-third share of *C* in the property attached by *A* and *B*, which belonged to *C* and his two brothers jointly. No order was on that date passed on the application.

On the 14th January 1884 *E* purchased from *C* his one-third share in the attached properties, and the purchase-money was, by arrangement between the brothers, applied in satisfying the debt due to *A* and *B*.

On the 28th January 1884 an order was passed on the application of the 11th January 1884 granting the attachment asked for by *D*.

And on the 28rd April 1884 *E* preferred his claim to the one-third share purchased by him, and which had been since the purchase attached by *D*. The claim was disallowed on the ground that *E* had no title to the property, he having purchased whilst the property was under attachment.

\* Rule No. 891 of 1884, against the order of Baboo Kristo Chunder Chatterji, First Subordinate Judge of 24-Pergunnahs, dated the 23rd of April 1884.