

prosecution for the offence of giving false evidence before the Sub-Registrar was neither commenced by him, or by any of the officers mentioned in s. 83, nor was it sanctioned by any or either of them. These being our views on the case the Magistrate will proceed to dispose of the first charge against the accused as he may think proper, having regard to the evidence before him, of the sufficiency of which we offer no opinion. The proceedings on the second charge must be set aside.

*Additional charge quashed.*

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## APPELLATE CIVIL.

*Before Mr. Justice McDonell and Mr. Justice Field.*

KHADEM ALI (PLAINTIFF) v. TAJIMUNNISSA AND OTHERS  
 (DEFENDANTS).\*

1884  
 April 17.

*Restitution of conjugal rights—Registration of Mahomedan Marriages—Bengal Act I of 1876, s. 6, Sch. A—Copy of entry in Register—Evidence.*

A husband and wife, Mahomedans, registered their marriage under Bengal Act I of 1876, setting out in the form prescribed in Schedule A to the Act, as "a special condition" that the wife under certain circumstances therein set out might divorce her husband.

These circumstances occurred; and the wife divorced her husband. *Held*, in a suit by the husband for restoration of his conjugal rights, that the "special condition" was a matter which, under the provisions of the Act it was the duty of the Mahomedan Registrar to enter in the register, and that therefore a copy of the entry in the register was legal evidence of the facts therein contained.

THIS was a suit brought by one Khadem Ali against Tajimunnissa, his wife, for restitution of conjugal rights. The wife's father, defendant No. 2, her brother defendant No. 3, and some other relatives were also made defendants.

The plaintiff alleged that his wife's father and brother took his wife to their house promising to send her back in 15 days, but that they failed to do so. Defendants Nos. 2 and 3 contended that the plaintiff had maltreated his wife and had driven her away, and

\* Appeal from Appellate Decree No. 1936 of 1882, against the decree of Baboo Kristo Mohun Mukerji, First Subordinate Judge of Chittagong, dated the 24th of June 1882, reversing the decree of Baboo Poorna Chunder Roy, Munsiff of Dakshinputtiah, dated 27th of December 1880.

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that she therefore divorced him as she was entitled to do under "a special condition" of the register of her marriage, drawn up in compliance with Schedule A of Bengal Act I of 1876, which set out in Art. 14 that the wife might divorce the husband if he maltreated her, or took away her ornaments. A copy of this register was put in evidence.

Defendant No. 1, the wife, alleged that a quarrel having arisen between her and the plaintiff's mother (with whom she never agreed), plaintiff had assaulted and maltreated her, and that she had therefore divorced him and had gone to live with her relatives.

The Munsiff found that the defendants had failed to prove any quarrelling in the husband's house, and that their witnesses gave such unreliable evidence as to the assault and as to any divorce having taken place; whilst, on the other hand, he found that the defendants had taken the wife away from her husband; he therefore gave a decree in favor of the plaintiff.

The defendant No. 1 appealed to the Subordinate Judge, who himself examined the plaintiff and defendant No. 1, and on the evidence of defendant No. 1 he found that she had been cruelly maltreated by her husband, and held that under the special conditions above referred to she had rightfully divorced him; he therefore reversed the decree of the Munsiff. The plaintiff appealed to the High Court.

Munshi *Serajul Islam*, for the appellants, contended that the recital in the register of the Marriage Registrar ought not to have been used in evidence, as the register had not been duly proved; and that it could not be used as evidence that the parties had agreed that the wife should be at liberty under certain circumstances to divorce her husband.

Baboo *Aukhil Chunder Sen* for the respondent.

Judgment of the High Court was delivered by

FIELD, J.—The only point upon which we need make any observation in this case is the contention that a copy of a register kept under the provisions of Bengal Act I of 1876, was not admissible in evidence to prove that the parties had agreed that the wife would, under certain circumstances, have the right to divorce her husband. Section 6 of the Act directs that every

Mahomedan Registrar shall keep certain books, and amongst them Book I, which is a register of marriages in the form "A" contained in the schedule annexed to the Act. Now, the 14th clause of form "A" is: "Special conditions, if any." It is clear, therefore, that the special condition relied upon in this case was a matter which, under the provisions of the Act, it was the duty of the Mahomedan Registrar to enter in the register kept in accordance with the directions of the Act.

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This being so, we think that the copy of the entry in the register was legal evidence.

We have heard the learned vakil on the other points raised in the case, and we do not think there is any ground upon which we can interfere.

The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Wilson and Mr. Justice Tottenham.*

NURSING NARAIN SINGH AND ANOTHER (DEFENDANTS) v. ROGHOOBUR SINGH (PLAINTIFF). \*

1884  
April 24.

*Execution Sale—Money decree—Mortgage decree—Notice—Civil Procedure Code (Act XIV of 1882), s. 287.*

A creditor obtained two decrees against his debtor, one being a mortgage decree to enforce his lien on certain property, and the other a simple money decree. In execution of the second decree the property over which the judgment-creditor had a lien was sold and was purchased by a third person. Subsequently, in execution of the first decree, at the instance of the judgment-creditor, this same property was advertised for sale, but on the auction-purchaser objecting, the judgment-creditor brought a suit against him to enforce his lien on the property in the hands of the auction-purchaser. *Held*, that it lay on the plaintiff, in order to entitle him to recover in the suit, to show that the defendants purchased with notice of the lien.

*Held*, further, that the fact that for some purpose at some time or other the judgment-creditor informed the Court of the mortgage is not evidence of notice on the auction-purchaser.

One Hanuman Dutt Singh borrowed two sums of money from

\* Appeal from Appellate Decree No. 665 of 1883, against the decree of Baboo Bolak Chand, Subordinate Judge of Bhagulpoore, dated 22nd of December 1882, reversing the decree of Syed Abdul Karim, Munsiff of Begusaraie, dated 20th of January 1882.