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MUHAMMAD
MUMTAZ
AHMAD
v.
ZUBAIDA JAN.

ants, except the representatives of Muhammad Usman, who is dead, their costs in the Courts below, that a finding be entered for the defendants on the first issue that the amount of the consideration was not paid, and that the Rs. 2,500 were taken back; and upon the second issue, that the deed of gift in favour of Zahur Fatma was executed with the authority of Himayat Fatma, that possession was taken under it, and held in accordance therewith, and that the possession taken under the deed transferred the property; and that upon those findings a decree be given for the defendants, and that it is unnecessary to record any finding upon the other issues.

The appellants must pay the costs of the appeal to Her Majesty in Council.

Appeal dismissed.

Solicitors for the appellants: Messrs. *Barrow and Rogers.*

Solicitors for the first six respondents: Messrs. *Watkins and Lattey.*

CRIMINAL REVISIONAL.

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May 30.

Before Mr. Justice Brodhurst.

RUKMIN (PETITIONER) v. PEARE LAL (OPPOSITE PARTY)

Husband and wife—Maintenance of wife—"Cruelty"—Criminal Procedure Code, s. 488.

The word "cruelty" in s. 488 of the Criminal Procedure Code is not necessarily limited to personal violence. *Kelly v. Kelly* (1) and *Tomkins v. Tomkins* (2), referred to.

THIS was a reference under s. 438 of the Criminal Procedure Code by the Sessions Judge of Allahabad. The facts are sufficiently stated in the judgment of the Court.

Babu *Jogindro Nath Chaudhri*, for the petitioner Musammât Rukmin.

Mr. *C. Dillon*, for Peare Lal.

BRODHURST J.—I concur with the Sessions Judge that this case, which has been brought by a wife against her husband, under s. 488

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of the Criminal Procedure Code, for maintenance, has been disposed of by the Magistrate in too summary a manner.

It is alleged that the Magistrate did not allow the examination-in-chief of the petitioner to be conducted by her pleader, that he himself asked her only a few preliminary questions, that he refused to examine any of her witnesses, and that he rejected her application "because she only alleges three occasions of ill-treatment, and the last of these was a year ago," but that if the petitioner, who is a native lady unaccustomed to appear in the Courts, was examined with patience and consideration she would be able not only to show that she still bears the scar of a wound inflicted by her husband, but that she with the assistance of her witnesses would prove that her husband has habitually treated her with cruelty.

If the petitioner can prove the latter allegations, she will be entitled under the provisions of s. 488 of the Criminal Procedure Code to receive an allowance from her husband.

The Magistrate appears to have thought that nothing except personal violence would constitute "cruelty" within the meaning of the section above-mentioned; but that is not so. There can be legal cruelty without the use of actual physical violence by the husband towards the wife, as is shown in *Kelly v. Kelly* (1), where it was held,—“If force, whether physical or moral, is systematically exerted to compel the submission of a wife to such a degree and during such a length of time as to injure her health and render a serious malady imminent, although there be no physical violence such as would justify a decree, it is legal cruelty and entitles her to a judicial separation.” And in *Tomkins v. Tomkins* (2) the Judge Ordinary observed that whether there had or had not been cruelty was a question of fact. “The Court will direct the jury in cases coming before a jury, what acts constitute legal cruelty, and they will have to find whether the acts done are cruelty or not;” and the question is whether “the husband has so treated his wife and so manifested his feelings towards her as to have inflicted bodily injury, to have caused reasonable apprehension of bodily suffering, or to have injured

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health." I set aside the Magistrate's proceedings, and I direct that he take the evidence of the petitioner and her witnesses and otherwise dispose of the case in accordance with law and the above remarks, after having recorded a finding whether or not Lala Peare Lal has habitually treated his wife, the petitioner, with cruelty.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Straight.

BUDDHU LAL (DECREE-HOLDER) v. REKKHAB DAS (JUDGMENT-DEBTOR).*

Execution of decree—Decree payable by instalments—Default—Waiver—Limitation.

A decree was made for payment of the decretal amount by monthly instalments running over a period of twelve years; and it was provided that on default the decree-holder might execute the decree as a whole for the balance then due. In 1883 a default was made, and in 1884 the decree-holder filed an application for execution in respect thereof, but did not proceed with it, and continued to receive the monthly instalments. In 1887, he made another application for execution, in which he relied on the same default.

Held that the default if it was one had been waived by the decree-holder, and that such waiver was a good defence to the present application. *Mumford v. Peal* (1) and *Asmutullah Dalal v. Kally Churn Mitter* (2) distinguished.

THIS was an appeal under s. 10 of the Letters Patent from the following judgment of Tyrrell, J. :—

TYRRELL, J.—This is a very simple case. The parties agreed, and an order of Court was made, that the judgment-debtor should satisfy the decree-holder's claim against him by monthly payments of two rupees to be followed by the payment of such a sum in the twelfth year after the decree as would clear off the entire claim of the decree-holder. The decretal order to this effect was made on the 16th May, 1881, and this decretal order did not state from what date to what date each instalment was to be reckoned: that is to say, it was not recorded whether the months were to be counted from the 16th May, 1881, to the 16th June, 1881, and so on for future time, or, whe-

* Appeal under s. 10 of the Letters Patent.

(1) I. L. R., 2 All., 857. (2) I. L. R., 7 Calc., 56.