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With every respect to the conclusion arrived at by the learned Judges, I find myself unable to adopt the view they took of the law. I do not find myself at liberty to import into the Code definitions which are provided for the purposes of some other Act of the Legislature. The Code contains a section which is devoted to the defining of words which might have an ambiguous meaning, and in that section there is a particular clause which empowers me to adopt and to import into the Code the definition of words which have been expressly defined in the Indian Penal Code, but does not empower me to import definitions from any other Act, such, for instance, as the Indian Evidence Act, which was in existence at the time when the Code of Criminal Procedure found its place in its present form on the Statute Book. The word "Court" must be taken in its ordinary sense, and the word would not in ordinary language be one used of the office of a Registrar. Throughout the Indian Registration Act the Registrar is described as an officer and his place of business as an office. When it is necessary to invest him with the powers and privileges of a Court the language used is language which clearly implies that he is not a Court. Section 75 of Act III of 1877 makes use of the expression "as if he were a Civil Court." In s. 483 of the Code of Criminal Procedure he is to be deemed to be a Civil Court "for special purposes." I accordingly, as on a previous occasion in this Court, hold that he is not a Court within the meaning of the word as used in s. 195 of the Code.

I accordingly direct that the trial in this case be transferred to the Court of Sessions at Saháranpur, this being a Court which I am informed will be more convenient for the parties and the witnesses than the Court at Aligarh.

Before Mr. Justice Knox.

1893. February 17.

MAHBUBAN (APPLICANT) *v.* FAKIR BAKHSH (OPPOSITE PARTY).

Criminal Procedure Code, ss. 488, 490—*Order for maintenance of wife—Application by wife to enforce order—Plea that applicant had been divorced—Duty of Court to which application for enforcement is made.*

Where a person in whose favour an order under s. 488 of the Code of Criminal Procedure has been made takes that order before a Magistrate, and the Magistrate

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finds that he has jurisdiction owing to the residence of the person affected by the order, and is satisfied as to the identity of the parties and the non-payment of the allowance due, it is his duty to enforce the order for maintenance. It is no part of the duty of a Magistrate on such an application as above-mentioned, *viz*, an application under s 490 of the Code of Criminal Procedure, to entertain a plea by the party against whom the order is sought to be enforced to the effect that he has divorced the applicant and is therefore no longer liable to pay maintenance. *Zeb-un-nissa* v. *Mendu Khán* (1) dissented from.

THIS was a reference made by the District Judge of Cawnpore under s. 438 of the Code of Criminal Procedure. The facts of the case sufficiently appear from the judgment of KNOX, J.

Maulvi *Ghulam Mujtaba*, for the opposite party.

KNOX J.—In this case a sum of Rs. 3 was awarded as maintenance to one Musammat Mahbuban, wife of Fakir Bakhsh, on the 17th of June 1886. Musammat Mahbuban, on the 20th of July 1892, took the order under s. 490 of the Code of Criminal Procedure before the Joint Magistrate of Cawnpore and prayed that the order might be enforced against Fakir Bakhsh, who was a resident of Cawnpore. When the case came before the Joint Magistrate, Fakir Bakhsh objected and stated that as he had divorced Musammat Mahbuban and she was no longer his wife, the order of maintenance could no longer run against him. The Joint Magistrate went into the question whether Fakir Bakhsh had or had not divorced Musammat Mahbuban, came to the conclusion that he had, and that Musammat Mahbuban was no longer his wife and therefore had no power to apply any more for enforcement of the order granted in her favour on the 17th of June 1886. The District Judge of Cawnpore has sent up the case to this Court in accordance with the provisions of s. 438 of the Code, being of opinion that the Joint Magistrate was wrong in assuming that the maintenance order became invalid as a necessary consequence of the divorce. Musammat Mahbuban was not represented in this Court, but Mr. *Ghulam Mujtaba*, who appeared for Fakir Bakhsh, contended that the order of the Joint Magistrate was a good and proper order, and in support of the contention referred me to *Kasam Pirbhai* and his wife *Hirabai*

(1) Weekly Notes, 1885, p. 25.

(1). This was a case in which an order was made by a Magistrate under Act XLVIII of 1860, s. 10. The Act contains no provision corresponding to s. 490 of the Code of Criminal Procedure. This case was followed by the Bombay High Court in *In re Abdul Ali Ishmailji* and his wife *Husenbi* (2). The application before the Bombay Court was one made under s. 147 of the High Courts' Criminal Procedure Act of 1875. The husband was the petitioner and prayed that the order for maintenance which had been passed by the Chief Presidency Magistrate of Bombay, might be set aside on the ground that he, having divorced his wife, was no longer liable to provide for her. The Court, without giving any reasons for its judgment and following the precedent laid down in *In re Kasam Pirbhai* and his wife *Hirabai*, the case above alluded to, held that the Magistrate should no longer enforce his order for payment of maintenance. Mr. *Ghulam Mujtaba* next referred me to the precedent of this Court in *In re Din Muhammad* (3). In that case the application immediately before the Court, and therefore the application with which the Court dealt, was an application made by the husband that an order for maintenance might be set aside on the ground that he had divorced his wife according to the Muhammadan law. The judgment shows that the application was put forward under the section of Act X of 1872, which corresponds to s. 489 of the present Code. The application was held to have been rightly rejected. The Court refused to interfere, not on the grounds given by the Assistant Magistrate, but upon a point which incidentally arose, namely, that in any case a wife who had been divorced is entitled to maintenance till the expiration of the term known in the Muhammadan law as *iddat*. In the course of the judgment the learned Judge who delivered judgment cited with approval a judgment of the Calcutta High Court in which it was held that a Magistrate ought not to issue attachment upon or otherwise to execute an order for maintenance when the application was made by a wife who had been divorced on the ground that the order

(1) 8 Bom. H. C. Rep., 95. (2) I. L. R. 7 Bom., 180.
(3) I. L. R. 5 All., 226.

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was *functus officio*, and the view approved of was that when a Magistrate found that there had been a valid dissolution of the marriage tie he should refrain from taking any steps to enforce the order for maintenance from the date of such dissolution. In all the cases that have been cited so far it is noteworthy that the application with which the Courts had to deal were applications made by husbands to set aside orders for maintenance. In not one case so far as the reports show were the Courts dealing with an application on the part of the wife to have an order for maintenance enforced. There is, however, a case of this Court in *Zeb-un-nissa* v. *Mendu Khán* (1) in which the point raised before the Court was exactly the same as that with which I have to deal. Musammat Zeb-un-nissa sought to enforce the maintenance order in her favour. She was met by her husband with a plea that he had divorced her. The Magistrate declined to enforce the maintenance order, and the Judge reported the case, as in the present instance, and this Court was of opinion that before the Magistrate could pass the order he had done, he should have ascertained and determined the date when Musammat Zeb-un-nissa was legally divorced from her husband and to what arrears of maintenance she was entitled up to that date. The view taken by the Sessions Judge was the view taken by this Court, and Mr. Justice Oldfield added that the lady would not be entitled to maintenance after the date of divorce, but was so up to that date. I find myself unable to follow that precedent. The terms of s. 490 of the Code of Criminal Procedure are very clear and precise. They lay down that persons to whom an order for maintenance has been given are entitled to take that order before the Magistrate of the place in which the persons upon whom the order is made reside. The section goes on to provide that such order shall be enforceable by any Magistrate in the place on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due. No power, it appears to me, is given to such Magistrate to make any further inquiry. It must be clearly understood that I am dealing with the case falling under

(1) Weekly Notes 1885, p. 29.

s. 490 and am not now considering how or in what way a person against whom an order for maintenance has been given should move or act if he wishes to have the order set aside. What I now decide is that when a person in whose favour such an order has been given takes it before a Magistrate, and the Magistrate finds that he has jurisdiction owing to the residence of the person affected by the order, and is satisfied as to the identity of the parties and the non-payment of the allowance due, it is his duty to enforce the order for maintenance. For these reasons I direct that the order of the Joint Magistrate by which he rejected the application for enforcement be set aside and that he be directed to confine himself to the question of the identity of parties and the non-payment of maintenance, and if he is satisfied on these points to enforce the application of Musammat Mahbuban as it stands.

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Before Mr. Justice Tyrrell and Mr. Justice Blair.

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February 7.

SUPERUNDDHWAJA PRASAD (PLAINTIFF) *v.* GARURADDHWAJA PRASAD (DEFENDANT).*

Wájib-ul-arz—Improper use of wájib-ul-arz to record wishes of sole proprietor of village—Succession—Hindu law—Primogeniture.

The object of the *wájib-ul-arz* is to supply a reliable record of existing local custom. It was never intended that the *wájib-ul-arz* should be used as an indirect means of giving effect to the wishes of a sole proprietor with regard to the nature of his tenure or the mode of devolution of the property which should obtain after his death.

The facts of this case are fully stated in the judgment of Blair, J.

Mr. A. Strachey, Mr. D. Banerji and *Munshi Ram Parsad*, for the appellant.

Mr. T. Conlan, Babu Jogindro Nath Chaudri and *Munshi Gobind Prasad*, for the respondent.

BLAIR, J.—In this case Kuar Superunddhwaja Prasad Singh was the appellant and Thakur Garuraddhwaja Prasad Singh was

*First appeal No. 124 of 1889 from a decree of Babu Abinash Chandra Banerji, Subordinate Judge of Aligarh, dated the 14th January 1889.