

1895

NARAIN  
DAS.  
v.  
HAZARI LAL.

resistance, obstruction or dispossession than that mentioned as forming the subject of the complaint. They held that such was the plain interpretation of the terms of the Act, and we agree with them in that view. The first plea therefore fails.

Our decision upon the second plea virtually proceeds upon the same ground, assuming that the suit brought in 1890 was dismissed under section 102 of the Code of Civil Procedure. All that section 103 enacts is that when a suit is so dismissed, the plaintiff is precluded from bringing a fresh suit in respect of the same cause of action. We hold that, as regards the proceedings of 1890, the cause of action was the resistance made by Narain Das on or about the 5th of April 1887. The cause of action in the present proceedings is the perfectly distinct and separate resistance offered by Narain Das in the separate execution proceedings founded upon a different order passed on or about the 22nd of November 1892. The second plea therefore also fails, and this appeal will stand dismissed with costs.

*Appeal dismissed.*

1896  
January 10.

*Before Mr. Justice Know and Mr. Justice Blair.*

IN THE MATTER OF THE PETITION OF E. MORGAN.\*

*Act No. IV of 1869 (Indian Divorce Act), section 3, clause (5)—Minor children—Age of majority—Alimony—Application for refund of alimony paid by mistake after period during which it was payable had expired.*

In 1882 a decree for dissolution of marriage between E. M. and S. M. was passed by the High Court on the wife's petition, and the husband was ordered to pay alimony for the wife and certain minor children of the marriage. On the 26th of August 1895 a petition was presented to the Court on behalf of E. M. stating that S. M. had married again on the 3rd of August 1895; that one of the children in respect of whom alimony was payable had come of age on the 16th of April 1895; and that another of such children had married in April 1893, and it was prayed that certain sums which had been paid into Court after the respective dates mentioned above as alimony in respect of the three persons above referred to might be refunded. *Held* that E. M. was not entitled to any refund of alimony except as to sums, if any, paid into Court after the date of the filing of petition for refund and relating to a period subsequent to that date.

THIS was an application for the refund of certain sums paid as alimony under an order of the Court. Sarah Morgan, one of

\* Application of the respondent in Matrimonial Case No. 1 of 1881.

the persons on whose behalf the money sought to be recovered had been paid, had brought a suit for dissolution of marriage against the applicant in the Court of the Judicial Commissioner of Lucknow. The Judicial Commissioner dismissed the suit. The petitioner appealed to the High Court, a Division Bench of which, after overruling the respondent's objection to the jurisdiction, proceeded to hear the appeal, and granted the petitioner a decree *nisi* for dissolution of her marriage with the respondent, which decree also provided for alimony to be paid to the petitioner and the minor children of the marriage. (See I. L. R., 4 All., 306, *Morgan v. Morgan*.) The remaining facts of the case sufficiently appear from the order of the Court.

Babu *Satya Chandar Mukerji* for the applicant.

Mr. *H. T. Coleman* for the opposite parties.

KNOX and BLAIR, JJ.—This is an application presented by one Morgan setting out that Sarah Morgan, to whom alimony had been decreed under the orders of this Court, had married one Sergeant Fox, and that Irene Morgan, for whose maintenance an order had been made, had attained majority on the 16th of April 1895. There was a further allegation that a daughter, Clara, for whose maintenance an order had been made, had married in April 1893. The petitioner prayed for refund of all the moneys paid under the orders of this Court to the three persons, Sarah Morgan, Irene Morgan and Clara Morgan, after the date on which Sarah Morgan had been remarried, Clara Morgan had married and Irene Morgan had attained majority. It was contended on behalf of Irene Morgan that she was still a minor. The authority for this contention was based on section 3 of the Indian Majority Act of 1875. The Indian Divorce Act contains in section 3, clause (5), the interpretation which is to be placed on the words "minor children" wherever they occur in that Act. It is admitted that on that interpretation Irene Morgan can no longer be considered a minor. With reference to the prayer that the sums already paid be refunded, we know of no authority for such a proposition, and we confess to feelings of surprise at such a request being made on the

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part of the father. The application was presented to this Court on the 26th of August 1895. All sums which under our previous orders were payable to Sarah Morgan and Irene Morgan, and all sums which were paid into Court before that date, will be made over to the parties to whom under our previous orders they were due and payable. Any sums paid after that date and for a term subsequent to the 26th of August 1895, if there be any such, will be refunded to the petitioner. We give no costs.

1896

February 7.

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

GHANSHIAM SINGH (PLAINTIFF) v. DAULAT SINGH (DEPENDANT)\*

Act No. XII of 1881 (North-Western Provinces Rent Act), section 34, clause (a)—  
Act No. IX of 1872 (Indian Contract Act), section 73—*Thekadar—Liability of defaulting thekadar to pay inter*

The non-application of clause (a) of section 34 of Act No. XII of 1881 to a "*thekadar*" does not exempt the *thekadar* from his liability under section 73 of Act No. IX of 1872. Hence where a *thekadar* makes default in payment of his rent he is liable to be charged with interest on the sums due up to the date of payment.

THE plaintiff in this case, Raja Ghanshiam Singh, sued the defendant, Daulat Singh, as lessee (*thekadar*) of a village, Nagla Kashi, to recover certain sums alleged to be due by him under his lease, with interest to date of suit, together with future interest and costs. The defendant claimed certain deductions from the principal amount sued for, and further pleaded that by virtue of the explanation to section 34 of the N.-W. P. Rent Act he was not liable to pay interest on the arrears of rent.

The Court of first instance (Assistant Collector of Aligarh) found all the issues in favor of the plaintiff and decreed the claim with interest to date of suit and future interest.

On appeal the lower appellate Court (District Judge of Aligarh) modified the decree of the first Court by disallowing the claim for interest, holding that the allowance of interest was precluded by section 34 of Act No. XII of 1881.

\* Second Appeal No. 1189 of 1891, from a decree of W. Blennerhassett, Esq., District Judge of Aligarh, dated the 9th July 1891, modifying a decree of Pandit Kanta Prasad, Assistant Collector of Aligarh, dated the 30th October 1890.