

sues to recover it. It was sought by the learned advocate for the appellant to bring the case within clause 29(c) of the second Schedule attached to Act No. IX of 1887. But this is not a suit for the balance of a partnership account, as the partnership, so far as the plaintiff is concerned, does not exist. Clause 29(c) contemplates a suit to ascertain the profits and loss of a business and to have a balance of a partnership account struck, and was never intended to extend to the recovery of a mere debt due to a retired partner from the firm.

The appeal fails and is dismissed, but without costs.

Appeal dismissed.

Before Mr Justice Banerji and Mr. Justice Aikman.

GHAZI (DEFENDANT) v. SUKRU (PLAINTIFF).*

Hindu Law—Marriage—Consent of the father of the girl not always necessary to the validity of a marriage.

Under the Hindu law if a girl is given in marriage by her mother and all the necessary rites are duly performed and there is no question of force or fraud and no other legal impediment to the marriage, the marriage will not be invalid merely because the consent of the girl's father has not been obtained. *Bacc Rulyat v. Jey Chund Keowl (1)* and *Venkatacharyulu v. Rangacharyulu (2)* referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Madho Prasad*, for the appellant.

Pandit *Moti Lal*, for the respondent.

BANERJI and AIKMAN, JJ.—This was a suit brought by the respondent against the appellant, his father-in-law, in which he prayed that his wife, the daughter of the defendant, be allowed to live with him, and that her father be restrained from offering obstruction to her doing so. The plaintiff was married to defendant's daughter on the 14th of May 1894. The marriage was celebrated without the consent of the defendant by the girl's mother, whom the defendant had ceased to support for a number

* Second Appeal No. 386 of 1895, from a decree of Babu Brij Pal Das, Subordinate Judge of Allahabad, dated the 7th March 1895, reversing a decree of H. David, Esq., Munsif of Allahabad, dated the 10th September 1894.

(1) 1 Morley's Digest, 181.

(2) 1 L. R., 14 Mad., 316.

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of years. It has been found that the girl had attained marriageable age, and that by reason of the father not supporting his wife and daughter, the mother and mother's brother, with whom they had been living, secretly married the girl to the plaintiff. It has been found that the usual rites of marriage were gone through, and that the relationship between the plaintiff and the girl was not such as to render the marriage illegal under Hindu Law. The question which was raised in the lower Courts was whether the marriage under such circumstances was valid according to Hindu Law. The Subordinate Judge, on the authority of the rulings cited by him in his judgment, held that it was a valid marriage and granted to the plaintiff the relief prayed for. Against this decree the defendant has preferred the present appeal, and it has been contended that the marriage of the plaintiff with the defendant's daughter without the defendant's consent was not a valid marriage. We are unable to accept this contention. A uniform course of rulings, dating back to 1843 (see *Base Rulyat and others v. Jey Chund Kewul*, 1, Morley's Digest, 181) has laid down that the want of a guardian's consent would not invalidate a marriage actually and properly celebrated. The authorities on the subject are all collected and carefully reviewed in the learned judgment of Muttusami Ayyar and Shephard, JJ. in *Venkatacharyulu v. Rangacharyulu* (1), and it seems to us unnecessary to refer to them in detail. In that case, upon the authorities referred to, it was held by the learned Judges that where there is a gift in marriage by the legal guardian and the marriage rites were duly solemnized, the marriage is irrevocable. The mother is a legal guardian of the daughter, though the father is a preferential guardian. If the girl was given away in marriage by her mother and all the necessary rites were duly performed that would make the marriage a valid marriage, and in the absence of force or fraud such marriage would not be regarded as void by reason of the father of the girl not consenting to it. Mr. Madho Prasad on behalf of the appellants concedes that mere absence of the father's consent would

not render the marriage void unless there was force or fraud. In this case it is admitted that there was no force, and we are unable to see how it can be urged that the marriage was celebrated by fraud. As we have said above, the learned Subordinate Judge has found that the father of the girl behaved badly towards his wife and daughter and treated them in a most unnatural manner; that for years he had deserted them, and that in consequence of his conduct they were living with the brother of the mother of the girl who supported and maintained both. The girl had attained a marriageable age, and the defendant, her father, had taken no steps to get her married. It was under such circumstances that the mother and her brother arranged with the plaintiff for the marriage of the girl with the plaintiff, took her to his house and there celebrated the marriage. We cannot hold under these circumstances that any fraud was committed. This appeal fails and is dismissed with costs.

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Appeal decreed.

Before Mr. Justice Knox and Mr. Justice Burkitt.

IMAM KHAN (PLAINTIFF) v. AYUB KHAN AND OTHERS (DEPENDANTS).
Civil Procedure Code section 13, Explanation II—Res judicata—Matter which might have been made ground of attack in a former suit.

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Where a plaintiff sued for possession of immovable property as owner, having no title as owner, but a possible title as mortgagee, it was held that he could not in a subsequent suit between the same parties for possession of the same property claim as mortgagee, inasmuch as his title as mortgagee might have formed an alternative ground of attack in the former suit. *Amolgh Ram v. Champa Lal* (1), *Mathura Prasad v. Sambhar Singh* (2), *Hasan Ali v. Siraj Husain* (3), *Atchayya v. Bangarayya* (4), and *Kameswar Pershad v. Rajkumari Rutun Koer* (5) referred to.

THE facts of this case are fully stated in the judgment of the Court.

* Second Appeal No. 213 of 1895 from a decree of Babu Bepin Behari Mukerji, Subordinate Judge of Aligarh, dated the 14th November 1894, confirming a decree of Maharaj Singh Mathur, Munsif of Haveli Aligarh, dated the 12th December 1893.

(1) Weekly Notes, 1891, p. 132.

(3) I. L. R. 16 All., 252.

(2) Weekly Notes, 1892, p. 224.

(4) I. L. R., 16 Mad., 117.

(5) L. R., 19 I. A., 234.