

the decree of the Court of first instance which has been restored by the decree of the appellate Court. In this view the present appellants were competent to apply for execution of the decree of the Court of first instance which was restored by the decree of this Court. The decree of this Court had, in my opinion, the effect of wiping away the order of remand of the lower appellate Court and relegating the parties back to the position in which they were before the order of remand was made. The lower appellate Court therefore erred in disallowing the application of the appellants for execution. I allow the appeal, and, setting aside the decree and order of the lower appellate Court with costs, restore that of the Court of first instance. The appellants will get the costs of this appeal.

1898

 MUL
CHAND
v.
RAM
RATAN.
Appeal decreed.

 REVISIONAL CIVIL.

1898

June 27.

Before Sir Louis Kershaw, Kt., Chief Justice, and Mr. Justice Burkitt.
THE N.-W. P. CLUB THROUGH G. B. GOYDER, HONORARY SECRETARY
(DEFENDANT) v. SADULLAH (PLAINTIFF).*

Club—Contract—Liability of the Secretary of a Club in respect of a contract entered into for the benefit of the members of the Club.

Held that the secretary of a Club could not, unless he specially accepted a personal liability, be sued personally on a contract entered into on behalf of the members of the Club by his predecessor in office; nor could the members of a Club collectively be sued through their secretary as their representative.

IN this case one Sadullah, who, on instructions from a previous secretary, had done certain work for the North-Western Provinces Club, sued the then secretary of the club for payment for labour and materials. The Court of Small Causes gave the plaintiff a decree. The defendant thereupon applied to the High Court in revision, not contesting the amount of the decree, which had been satisfied, but on the ground that the suit would not lie against the secretary in respect of a contract for the benefit of the members of the club at large, the club being an unregistered and unincorporated society.

Mr. W. Wallach, for the applicant.

KERSHAW, C.J., and BURKITT, J.—In this case an action was brought by Sadullah, the present respondent, against the

 * Civil Revision No. 25 of 1898.

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HONORARY
SECRETARY
S.
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N.-W. P. Club, through Mr. G. B. Goyder, the secretary of the said club, for work done by the plaintiff to the order of some one who at that time was occupying the position of the secretary of the said club. The plaintiff has been paid a sum which has satisfied his demand, but the defendant has made this application in revision on the ground that there was no liability on him as disclosed by the plaint, and indeed it would be highly undesirable that the secretary of a social club or one individual member of it should have an action brought against him of this kind, making him personally liable for the goods which were not delivered to him personally, but were delivered to, and became the property of, the social body of which he was the secretary. We take it the law with regard to this matter is accurately laid down in the case cited in 3 Times Law Reports at page 248, which lays down that an individual member of a club or a member of the committee of management who has not in any way pledged his personal credit, is not liable for goods ordered for, and supplied to the club, *i.e.*, as meaning an abstract entity unknown to the law.

It has been found as a fact by the learned Judge below in this present case that at the time the order was given Mr. Goyder was not secretary of the club, and as a fact this very order was given not by him but by a prior secretary of the club.

Therefore it stands to reason that Mr. Goyder did not pledge his personal credit, and he took no part at all in the transaction. Now the action may be said by those who brought it to be an alternative action, first, against the N.-W. P. Club, secondly, against Mr. Goyder, secretary of the club. We have dealt with the question as to whether Mr. Goyder is or is not personally liable. The question remains as to whether the action can rightly be said to have been brought against the N.-W. P. Club, that is, what the case mentioned above calls an abstract entity unknown to the law. To hold that an action lay against it and to give judgment in such action would be to hold that an action lay against a great number of individuals who had not been cited in the action, who had no opportunity of appearing, but who

should have been so cited, and who should have had such opportunity given to them to appear and contest the action. On that ground the action should have been dismissed against the club.

We think that there is another ground upon which the action against the club should be dismissed, and that is, that as alleged in the plaint the contract was entered into by the club through its secretary. It is clearly shown as a fact that at the time the contract was entered into, Mr. Goyder was not secretary at all. Our order is:—We allow this application, set aside the decree of the Court below, and we dismiss the plaintiff's suit.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Aikman.

ABID HUSEN (DEPENDANT) v. BASHIR AHMAD (PLAINTIFF).

Pre-emption—Muhammadian law—Talab-i-ishtishhad—Reference necessary to the previous talab-i-mawasibat.

When in asserting a claim for pre-emption the making of the *talab-i-ishtishhad* is required, it is absolutely necessary that at the time of making this demand reference should be made to the fact of the *talab-i-mawasibat* having been previously made, and this necessity is not removed by the fact that the witnesses to both demands are the same. *Rujjub Ali Chopedar v. Chundi Churn Bhadra* (1), *Akbar Husain v. Abdul Jalil* (2), and *Abasi Begam v. Afzal Husen* (3) followed. *Nundo Pershad Thakur v. Gopal Thakur* (4) dissented from.

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

Maulvi Ghulam Mujtaba, for the appellant.

Mr. Amiruddin, for the respondent.

AIKMAN, J.—This is an appeal by the defendant vendee in a suit for pre-emption which was based on the Muhammadian law.

Second Appeal No. 566 of 1897 from a decree of Pandit Raj Nath, Subordinate Judge of Moradabad, dated 1st June 1897, reversing a decree of Babu Nihala Chandra, Muhsif of Amroha, dated the 2nd December 1896.

(1) I. L. R., 17 Calc., 543.

(3) I. L. R., 20 All., 457.

(2) I. L. R., 16 All., 383.

(4) I. L. R., 10 Calc., 1,003.

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July 1.