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said to be written by Nityanand Prasad Singh, on the 22nd January, 1906, amounted to payment and acknowledgment as are intended by sections 19 and 20 of the Indian Limitation Act, 1877. We hold that neither the alleged payment nor the alleged letter amounts to a payment or acknowledgment intended in those sections. We dismiss the appeal in both the cases with costs.

Appeal dismissed.

PRIVY COUNCIL.

P.C. 1910 *April* 15, 19, *June* 7.

KHWAJA MUHAMMAD KHAN (DEFENDANT) *v.* HUSAINI BEGAM (PLAINTIFF).

[On appeal from the High Court of Judicature at Allahabad.]

Marriage amongst Muhammadans—Agreement by father-in-law of bride to pay annuity to her in consideration of her marriage to his son—"Kharch-i-pandan"—"Pin-money"—Right to sue of person not party to agreement—Agreement on behalf of minors—Refusal to live with husband—Unconditional agreement to pay allowance.

In accordance with an arrangement made between the defendant and the father of the plaintiff (then a minor) on the occasion and in consideration of her marriage with the defendant's son (also a minor), the defendant executed a document whereby he agreed to "continue to pay the sum of Rs. 500 a month in perpetuity" to the plaintiff for her "pandan (betel nut expenses" &c.) "from the date of the marriage, *i.e.*, from the date of her reception," and made the payment of the allowance a charge on certan immovable property specified in the agreement. The plaintiff's reception into her husband's house took place in 1883. The husband and wife lived together till 1896, when owing to differences she left her husband's home and resided elsewhere, when the defendant stopped the payments. In a suit to recover arrears of the allowance *Held* (affirming the decision of the High Court) that the plaintiff, though not a party to the agreement was entitled in equity to enforce her claim.

Tweddle v. *Atkinson* (1) distinguished as being an action of assumpsit and decided on a rule of common law inapplicable to the circumstances of the present case, in which the agreement specifically charged immovable property with the payment of the allowance, and the plaintiff was the only person beneficially entitled under it.

In India and amongst communities circumstanced as were Muhammadans, among whom marriages were contracted for minors by parents and guardians, serious injustice might be occasioned if the common law doctrine were applied to agreements or arrangements entered into in connexion with such contracts.

Held also that the allowance for "kharch-i-pandan," though having some analogy in its nature to the English "pin-money" stood on a different legal

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(1) (1861) 1 B. & S. 393.

footing arising from difference in social institutions. It was a personal allowance to the wife, over the application of which the husband had little or no control, nor were there obligations attached to it as was the case with "pin-money" in England. On the terms of the agreement here the payment of the allowance was unconditional, and under the circumstances the fact that the plaintiff had left her husband's house and refused to live with him did not bar her from recovering it.

APPEAL from a judgement and decree (27th November 1906) of the High Court at Allahabad, which reversed a decree (16th August 1904) of the Subordinate Judge of Agra, and decreed the respondent's suit.

The suit was brought against the appellant for the recovery of Rs. 15,000 due to the plaintiff as arrears of an allowance under an agreement executed in her favour by the defendant on the 25th October 1877 in contemplation and consideration of the plaintiff's marriage with the defendant's son, both the plaintiff and her future husband being minors at the time of its execution.

The facts of the case are fully stated in the report of the case in the High Court (Sir JOHN STANLEY, C. J. and Sir WILLIAM BURKITT, J.) which will be found in I. L. R., 29 All., 151.

On this appeal—

Cave, K. C., and *Ross* for the appellant contended that the respondent could not sue upon the agreement as she was not a party to it and was a minor when it was executed. Reference was made to *Tweddle* v. *Atkinson* (1) [Lord MACNAGHTEN. Here a charge upon immovable property has been by the agreement created in the respondent's favour; why cannot she sue?] Not being a party to it she is not entitled to enforce it, or to take advantage of its provisions.

At any rate the allowance was not recoverable after the date she ceased to live with her husband. The money was given to her for her expenses to enable her to support her position as a wife, and having deliberately left her husband and refused to go back to him, she was no longer entitled to the allowance. Reference was made to Sir Roland Wilson's Anglo Mahomedan Law (3rd edition, 1908) pages 123, 125 and 133; *Donovan* v. *Needham* (2), *Howard* v. *Digby* (3) and Wilson's Glossary, 393, as to the meaning of "pandan."

(1) (1861) 1 B. and S., 393. (2) (1846) 9 Beavan, 164.
(3) (1834) 2 Cl. & Fin., 634 (653).

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DeGruyther, K. C., and *Cowell* for the respondent were not called on.

1910, *June 7th*:—The judgement of their Lordships was delivered by MR. AMEER ALI:—

The suit which has given rise to this appeal was brought by the plaintiff, a Muhammadan lady, against the defendant, her father-in-law, to recover arrears of certain allowance, called *kharch-i-pandan*, under the terms of an agreement executed by him on the 25th October, 1877, prior to and in consideration of her marriage with his son Rustam Ali Khan, both she and her future husband being minors at the time.

The agreement in question recites that the marriage was fixed for the 2nd November, 1877, and that "therefore" the defendant declared of his own free will and accord that he "shall continue to pay Rs. 500 per month in perpetuity" to the plaintiff for "her betel-leaf expenses, etc., from the date of the marriage, *i.e.*, from the date of her reception," out of the income of certain properties therein specifically described, which he then proceeded to charge for the payment of the allowance.

Owing to the minority of the plaintiff, her "reception" into the conjugal domicile to which reference is made in the agreement does not appear to have taken place until 1883. The husband and wife lived together until 1896, when, owing to differences, she left her husband's home, and has since resided more or less continuously at Moradabad.

The defendant admitted the execution of the document on which the suit is brought, but disclaimed liability principally on two grounds, viz., (1) that the plaintiff was no party to the agreement and was consequently not entitled to maintain the action, and (2) that she had forfeited her right to the allowance thereunder by her misconduct and refusal to live with her husband.

Evidence of a sort was produced to establish the allegations of misconduct, but the Subordinate Judge considered that it was not "legally proved." In another place he expresses himself thus:—"Although unchastity is not duly proved, yet I have no hesitation in holding that plaintiff's character is not free from suspicion." Their Lordships cannot help considering an opinion of this kind regarding a serious charge as unsatisfactory. Either

the allegation of unchastity was established or it was not; if the evidence was not sufficient or not reliable, there was an end of the charge so far as the particular matter in issue was concerned, and it was hardly proper to give expression to what the Judge calls "suspicion."

The Subordinate Judge, however, came to the conclusion that the plaintiff's refusal to live with her husband was satisfactorily proved, and, holding that on that ground she was not entitled to the allowance, he dismissed the suit.

The plaintiff thereupon appealed to the High Court, where the argument seems to have been confined solely to the question of the plaintiff's right to maintain the action, as the learned Judges observe that neither side called their attention to the evidence on the record. They hold that she had a clear right to sue under the agreement, and they accordingly reversed the order of the first court and decreed the plaintiff's claim.

The defendant has appealed to His Majesty in Council, and two main objections have been urged on his behalf to the judgement and decree of the High Court.

First, it is contended, on the authority of *Tweddle* v. *Atkinson* (1) that as the plaintiff was no party to the agreement, she cannot take advantage of its provisions. With reference to this it is enough to say that the case relied upon was an action of assumpsit, and that the rule of common law on the basis of which it was dismissed is not, in their Lordship's opinion, applicable to the facts and circumstances of the present case. Here the agreement executed by the defendant specifically charges immovable property for the allowance which he binds himself to pay to the plaintiff; she is the only person beneficially entitled under it. In their Lordships' judgement, although no party to the document, she is clearly entitled to proceed in equity to enforce her claim.

Their Lordships desire to observe that in India and among communities circumstanced as the Muhammadans, among whom marriages are contracted for minors by parents and guardians, it might occasion serious injustice if the common-law doctrine was applied to agreements or arrangements entered into in connection with such contracts.

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It has, however, been urged with some force that the allowance for which the defendant made himself liable signifies money paid to a wife when she lives with her husband, that it is analogous in its nature to the English pin-money, over the application of which the husband has a control, and that, as the plaintiff has left her husband's home and refused to live with him, she has forfeited her right to it.

Kharch-i-pandan, which literally means "betel-box expenses," is a personal allowance, as their Lordships understand, to the wife customary among Muhammadan families of rank, especially in upper India, fixed either before or after the marriage, and varying according to the means and position of the parties. When they are minors, as is frequently the case, the arrangement is made between the respective parents and guardians. Although there is some analogy between this allowance and the pin-money in the English system, it appears to stand on a different legal footing, arising from difference in social institutions. Pin-money, though meant for the personal expenses of the wife, has been described as "a fund which she may be made to spend during the converture by the intercession and advice and at the instance of the husband." Their Lordships are not aware that any obligation of that nature is attached to the allowance called *kharch-i-pandan*. Ordinarily, of course, the money would be received and spent in the conjugal domicile, but the husband has hardly any control over the wife's application of the allowance, either in her adornment or in the consumption of the article from which it derives its name.

By the agreement on which the present suit is based the defendant binds himself unreservedly to pay to the plaintiff the fixed allowance; there is no condition that it should be paid only whilst the wife is living in the husband's home, or that his liability should cease whatever the circumstances under which she happens to leave it.

The only condition relates to the time when, and the circumstances under which, his liability would begin. That is fixed with her first entry into her husband's home when, under the Muhammadan law, the respective matrimonial rights and obligations come into existence. The reason that

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no other reservation was made at the time is obvious. The plaintiff was closely related to the ruler of the native state of Rampur; and the defendant executed the agreement in order to make a suitable provision for a lady of her position. The contingency that has since arisen could not have been contemplated by the defendant.

The plaintiff herself was examined as a witness for the defence. She states in her evidence that she has frequently been visited by her husband since she left his home. Neither he nor the defendant has come forward to contradict her statements. Nor does any step appear to have been taken on the husband's part to sue for restitution of conjugal rights, which the Civil Law of India permits. On the whole their Lordships are of opinion that the judgement and decree of the High Court are correct and ought to be affirmed.

Their Lordships will therefore humbly advise His Majesty that the appeal be dismissed.

The appellant will pay the costs.

Appeal dismissed.

Solicitors for the appellant:—*Barrow, Rogers & Nevill.*

Solicitors for the respondent:—*Ranken Ford, Ford & Chester.*

J. V. W.

KEDAR NATH AND OTHERS (PLAINTIFFS) *v.* RATAN SINGH (DEFENDANT).

P. C. 1910 *April* 19, 20, *June* 7.

[On appeal from the Court of the Judicial Commissioner of Oudh, at Lucknow.]

Hindu Law—Joint Hindu family—Family joint before annexation of Oudh—Confiscation of and grant by Government to person who had been a member of joint family—Whether subject of grant is self-acquired or joint—Separation by one member, effect of—Burden of proof.

Before the annexation of Oudh two estates Bohra and Sherpur (the latter being about one-third of the two together) belonged to an undivided Hindu family consisting of three brothers. The estates were confiscated on the annexation of the province, but shortly afterwards the Sherpur estate was granted by the Government to the eldest of the three brothers (the other two being minors) who was the head and manager of the family, the grant being expressed to be "by way of favour and award and not in consideration of proprietary right." In this appeal the appellants' (plaintiffs') case in a suit for a half share of the self-acquired property held by the eldest brother at his death, whether it was two-thirds or one-third of Sherpur, depended on whether the estate granted was the self-acquired property of the grantee, or the joint property of the three brothers. The appellants represented the second of the three

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