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that the defendant promised to deliver goods of the sample approved by the plaintiff at Allahabad. The defendant, on the other hand, says that the contract took place at Bombay, the quality of the goods was approved at Bombay, the price was paid at Bombay, and if any breach of contract took place, it took place at Bombay, where the goods were delivered to the Railway authorities to be sent to Allahabad.

The Small Cause Court Judge held that the suit was not cognizable by his court, because the fact alleged by the plaintiff that he discovered at Allahabad that the quality of the goods was not up to the mark agreed upon was not sufficient to bring the cause of action to Allahabad. The contract was made at Bombay, where it was complete, its breach can take place at Bombay only; the place of the discovery of the breach is of no consequence, as the contract of sale was complete at Bombay. The only thing that remained was the delivery at the direction of the plaintiff.

The learned Judge should have taken evidence as to whether the place of delivery was an essential part of the contract or not, vide section 48 of the Indian Contract Act of 1872. I set aside the order returning the plaint and direct that the learned Judge take evidence upon this point and then proceed with the case or otherwise as may be decided upon after the evidence is taken. Costs will abide the event.

Order set aside.

APPELLATE CIVIL.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

AMIR-UD-DIN (DEFENDANT) *v.* KHATUN BIBI (PLAINTIFF).*

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February, 10.

Muhammadan Law—Divorce—Revocation—Validity of the bedai *form of divorce.*

Held that it is not every kind of divorce which is revocable according to the Muhammadan Law, but only those made in certain forms. The *bedai* form of divorce is a perfectly legal form and is irrevocable. *In re Abdul Ali Ismailji* (1) followed.

* Second Appeal No. 899 of 1915, from a decree of E. Bennet, officiating District Judge of Allahabad, dated the 31st of May, 1915, confirming a decree of Farid-ud-din Ahmad Khan, Additional Munsif of Allahadad, dated the 18th of July, 1914.

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THIS was a suit brought by a divorced wife against her husband for the recovery of her dower, her movables in the possession of her husband, the defendant appellant, or their value, and her maintenance during her *iddat*. The claim was brought on the allegation that she had been lawfully married to the defendant some years ago and had lived with him as his wife up to the 8th of September, 1913, when he divorced her at the Railway Station at Allahabad as she was going with her parents to Mahoba against his wishes. The defendant admitted the marriage, but denied the alleged divorce. He further pleaded that the words used by him at the Railway Station on the 8th of September, 1913, did not in law have the effect of a valid divorce and in any case he had the option of revocation which he exercised within the prescribed period. The court of first instance believed the story of the plaintiff and repelled all the pleas in defence. It found on the evidence in the case that the defendant had on the 8th of September, 1913, addressed words of repudiation three times in immediate succession to his wife, which had the effect of a valid divorce under the Muhammedan law. As to the plea of revocation, it held that the defendant as a matter of fact did revoke the divorce, but he had no option of revocation, as he had pronounced a triple divorce which was irrevocable. The claim was accordingly decreed, and on appeal the decree of the first court was affirmed.

The defendant appealed to the High Court.

Mr. *Muhammad Ishaq Khan*, for the appellant.

Mr. *B. E. O'Conor*, for the respondent.

MUHAMMAD RAFIQ and PIGGOTT, JJ.:—The dispute between the parties to this appeal, who are husband and wife, is as to whether the conjugal relation between them still subsists. The suit out of which this appeal has arisen, was brought by the wife, the plaintiff respondent, for the recovery of her dower, her movables in the possession of her husband, the defendant appellant, or their value, and her maintenance during her *iddat*. The claim was brought on the allegation that she had been lawfully married to the defendant some years ago and had lived with him as his wife up to the 8th of September, 1913, when he divorced her at the Railway Station

at Allahabad as she was going with her parents to Mahoba against his wishes. The defendant admitted the marriage, but denied the alleged divorce. He further pleaded that the words used by him at the Railway Station on the 8th of September, 1913, did not in law have the effect of a valid divorce and in any case he had the option of revocation which he exercised within the prescribed period. The court of first instance believed the story of the plaintiff and repelled all the pleas in defence. It found on evidence in the case that the defendant had on the 8th of September, 1913, addressed words of repudiation three times in immediate succession to his wife, which had the effect of a valid divorce under the Muhammadan law. As to the plea of revocation it held that the defendant, as a matter of fact, did revoke the divorce, but he had no option of revocation as he had pronounced a triple divorce which was irrevocable. The claim was accordingly decreed and on appeal the decree of the first court was affirmed. In second appeal to this Court the husband contends that the divorce he pronounced on the 8th of September, 1913, was not under the Muhammdan law a valid divorce, and if it was he had the option of revoking it. He impeaches the validity of the divorce on the ground that under the Muhammadan law the only effective divorce is and should be that which is pronounced in the form and under the conditions sanctioned by the *Sunna* or the traditions, and any other mode of divorce which is inconsistent with them or disregards the qualifications laid down by them does not dissolve the marriage. In the present case the divorce pronounced by the appellant was admittedly not in accordance with the form sanctioned by the *Sunna* and hence was inoperative. It is conceded on behalf of the appellant that other modes of divorce at variance with those authorized by the traditions have also been recognized by the Muhammadan jurists as valid forms of repudiation and that the divorce pronounced by the defendant was in one of those forms. But they are, it is argued, innovations introduced by the jurists to oblige the Ommeyyade Caliphs, who wanted greater facility and easier rules of repudiation, and should not be recognized. In fact one of the forms recognized by the jurists, and which was the mode of divorce in the present case, was distinctly disapproved of by

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the Prophet. Reliance is placed by the appellant in support of his contention on Mr. Ameer Ali's book on Muhammadan Law. The passages cited to us are to be found in Volume II, page 514, and are as follows :—

"It (the *talak-ul-bidaat*), as its name signifies, is the heretical or irregular mode of divorce, which was introduced in the second century of the Muhammadan era. It was then that the Ommeyyade monarchs finding the checks imposed by the Prophet on the facility of repudiation galling, looked about for some escape from the strictness of the law and found in the pliability of the jurists a loophole to effect their purpose. As a matter of fact the capricious and irregular exercise of the power of divorce which was in the beginning left to the husbands was strongly disapproved by the Prophet. It is reported that when once news was brought to him that one of his disciples had divorced his wife, pronouncing the three *talaks* at one and the same time, the Prophet stood up in anger on his carpet and declared that the man was making a plaything of the words of God and made him take back his wife."

We do not think that the contention for the appellant should prevail. It is true that the *Sunna* or the traditions sanction only two modes of divorce, i. e., *ashan* and *Hasan*, but ever since the second century of the Muhammadan era the *bedai* or sinful or irregular form introduced by the jurists, which is admittedly inconsistent with the traditions, has been also recognized as a valid mode of repudiation. Mr. Ameer Ali, on whose book great stress is laid, nowhere says that divorce pronounced in the *bedai* form is invalid and should not be given effect to. Such a divorce has been upheld in courts in this country. We would refer to the case of *Abdul Ali Ismailji* (1). The judgement in that case is a short one and is as follows:—

"*Talak-ul-bidaat* or irregular divorce which is effected by three repudiations at the same time appears from the authorities to be sinful, but valid, and it was recognized as valid by this Court in *Rekasin Pirbhai and his wife Hirabai.*"

The learned counsel for the appellant wants us to take a different view. He says that the point has never come up before

(1) (1883) I. L. R., 7 Bom., 180.

and has never been decided by this Court and that we are not bound to follow the Bombay case. We should follow and enforce Muhammadan Law as it is and not as it has been improved upon and added to by the jurists at the instance of the Ommeyyade monarchs. We think that it is too late in the day for the appellant to ask us to disapprove of an established practice which has been in vogue for centuries. He has not cited a single authority in support of his proposition that the *bedai* mode of divorce is invalid. On the other hand, we would quote from Mr. Tyabji's book to show that the *bedai* form of repudiation is the most favoured. *Vide* Mr. Tyabji's Muhammadan Jurisprudence, page 144, which runs as follows:—

"By a deplorable, though natural, development of the Sunni Law, it is the fourth and the most disapproved or sinful mode of divorce, that is, the *bedai* form, that seems to be most favoured even by the law itself. For, the requirements of the other mode being seldom attended to, it is generally assumed (on the principle that the intention of the parties must as far as possible be given effect to) that the fourth mode was intended to be employed, with the result, not only that the formalities for the divorce are done away with, but even its effects are aggravated, for, inasmuch as pronouncement is presumed to be in this mode, it is presumed to be irrevocable. It is indeed possible that the Sunni jurists wished to inflict on a husband, who disregarded the requirements of section 136 (that is, divorce according to the traditions) the penalty of rendering the divorce irrevocable, and there are indications that they considered it always a favour to the wife to relieve her of the husband."

The most common and prevalent mode of repudiation in this country is the *bedai* one, in which three pronouncements of divorce are made to the wife at the same time in a single sentence or in separate sentences. And this was the manner in which the appellant repudiated his wife. We therefore agree with the lower court in holding that the defendant appellant pronounced a valid divorce on the 8th of September, 1913.

His second contention that he had the option of revocation is also unsound. A husband has the option of revocation only when he has pronounced a divorce which is "*rajai*".

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(revocable). He has no such option when the form of repudiation adopted by him is "*bain*," i.e., irrevocable. The appellant contends that a husband has the option of revocation in all modes of divorce and that in any case the mode adopted by him was revocable. In support of his first statement, he again refers to Mr. Ameer Ali's book, Vol. II, page 515. The passage relied upon is as follows:—

"All these schools allow revocation, that is, a husband who has suddenly and under inexplicable circumstances pronounced the *formula* against his wife, may revoke at any time before the three *tahrs* have expired. When the power of recantation is lost, the separation or *talak* becomes "*bain*": whilst it continues, the *talak* is simple, *rajai*, or revocable."

It is argued that the words "all these schools allow revocation" mean that revocation is permissible in all modes of repudiation. We are unable to place that interpretation on the words. What is meant by the words "all schools" is, all the schools of jurists. A careful examination of the passage and of other passages preceding and following it will show that the learned author never meant that revocation was permissible in all modes of repudiation. The opinion expressed in the passage under discussion has reference to revocable modes of divorce only. If the contention for the appellant were correct, the words *rajai* (revocable) and *bain* (irrevocable) used by the jurists with reference to modes of divorce would be meaningless. All writers on Muhammadan Law, when dealing with the subject of repudiation, speak of revocable and irrevocable forms of divorce. *Vide* Ameer Ali, pp. 536 and 537; Wilson, p. 144; Tyabji, pp. 132 etc. We are of opinion that a husband has not got the option of revocation in all cases. The manner in which the defendant appellant repudiated his wife was *bain*. He made three pronouncements of divorce to her at the same time in three separate sentences. The divorce he pronounced was thus irrevocable, *vide* Tyabji, 141; Abdul Rahim's Muhammadan Jurisprudence, pp. 336 and 337; Baillie, p 207. He had, therefore, no option of revocation. His appeal fails and is dismissed with costs.

Appeal dismissed.