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the possession of his vendee. We think, however, that the plaintiff has placed himself in such a position that the Court can afford him no relief in this suit, as it is now before us in second appeal. In his petition of appeal he merely contends that his conveyance is a valid instrument, and that on it he is entitled to be put in possession. The case, moreover, was tried in both the Lower Courts on issues directed solely to this purpose. It is impossible at this stage of the case to change the nature of the suit. The answer to the first question put must, therefore, be in the affirmative. It is unnecessary to answer the second question. The appeal must be dismissed with costs.

A. A. C.

APPELLATE CRIMINAL.

Before Mr. Justice O'Kinealy and Mr. Justice Ameer Ali.

JUKNI *alias* PARBATI *v.* QUEEN-EMPRESS.*

1892 *June* 7.

Bigamy—Sagai or nikka marriage—Relinquishment of wife—Penal Code, s. 494.

A conviction under section 494 of the Indian Penal Code cannot be supported where there is evidence to show that, by the custom of the caste, *sagai* or *nikka* marriage was admissible and that the husband had relinquished his wife.

In re Mussamut Chamia (1) followed.

IN this case the appellant, Jukni *alias* Parbati, was charged with the offence of having married again during the lifetime of her husband, under section 494 of the Penal Code.

The case for the prosecution was that Jukni was the duly married wife of one Matilal Saha, that she lived with him for several years, and that in February 1892 she went through a form of marriage with one Dukhu Saha while her marriage with Matilal was subsisting.

* Criminal Appeal No. 457 of 1892, against the order passed by H. Beveridge, Esq., Sessions Judge of Murshidabad, dated the 10th of May 1892.

(1) 7 C. L. R., 354.

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The defence was that although Jukni was married to Matilal Saha, yet he (Matilal) having relinquished her, she was entitled to marry another person in accordance with the custom of the caste to which they both belonged.

Both the assessors, who aided the Judge in trying the case, found Jukni not guilty of the offence, one of them being of opinion that Matilal Saha had relinquished her, and the other that the custom of *sagai* or *nikka* marriage prevailed in the caste.

The Judge held that Matilal Saha had not relinquished Jukni, and convicted her of an offence under section 494 of the Penal Code, and sentenced her to three months' rigorous imprisonment. Jukni appealed to the High Court.

Baboo *Jogesh Chunder Dey* for the appellant.

The *Deputy Legal Remembrancer* (Mr. *Kilby*) for the Crown.

During the argument Mr. *Kilby* cited and relied on the case of *Reg.* v. *Sambhu Raghu* (1) and referred to *In re Mussamut Chamia* (2).

The judgment of the Court (O'KINEALY and AMEER ALI, JJ.) was as follows:—

This is an appeal from the decision of the Additional Sessions Judge of Murshidabad, convicting Jukni of an offence under section 494 of the Indian Penal Code, and sentencing her to three months' rigorous imprisonment.

The case is hardly distinguishable in any point from the case of *In re Mussamat Chamia* (2). The defence in that case, as in this case, was, that by the custom of the caste *sagai* marriage or *nikka*, which generally means a second marriage, was admissible, and that the husband had relinquished the wife.

In this case the judge was of opinion that the husband had not relinquished the wife. One assessor was of a different opinion, and the second assessor, without referring to the question of relinquishment at all, was of opinion that the custom of *nikka* marriages prevailed in the caste.

(1) I. L. R. 1 Bom 347. (2) 7 C. L. R., 354.

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We think there is a large mass of evidence, some of it unrebutted in any way, to show that such a custom does exist. We agree with the assessor who came to the conclusion that Matilal Saha had relinquished his wife. No doubt it has been pointed out to us by Mr. Kilby on behalf of the Crown that, according to a decision of the Bombay High Court, such a marriage would not be binding; but a second marriage has been for a long time recognized by this Court among certain classes of people in this country.

We think, therefore, that the decision of the Judge must be set aside, and, acquitting the accused, we direct her discharge.

Conviction set aside.

A. F. M. A. R.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ameer Ali.

1892
June 2.

MAHABIR PERSHAD SINGH AND OTHERS (PLAINTIFFS) *v.* HURRIHUR PERSHAD NARAIN SINGH AND OTHERS (DEFENDANTS).*

Limitation—Instrument, suit to set aside or declare the forgery of—Immoveable property, suit for possession of—Limitation Act (XV of 1877), Schedule 2, Arts. 91, 92, 93, 144.

One *D* died in 1849, leaving an ikrarnamah or will. His widows entered into possession of his property, and the survivor died on the 23rd April 1886. The predecessors in estate of the plaintiffs brought a suit to set aside the ikrarnamah, which suit was dismissed in 1864, on the ground that they had no cause of action during the lifetime of the surviving widow. On the 29th June 1889 the plaintiffs, as the heirs of *D* after the death of the surviving widow, instituted a suit to recover possession of the property of *D* from the defendants, who claimed to have come into possession thereof under the ikrarnamah upon the death of the widow.

Held, that the suit was governed by the limitation of three years for a suit to set aside an instrument, and not by the general limitation prescribed for suits to recover immoveable property, as after the widow's death the

* Appeal from Original Decree No. 264 of 1890, against the decree of A. C. Brett, Esq., District Judge of Tirhoot, dated the 2nd of August 1890.