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done in a matter which the municipality thought ought to be done in June, 1920.

I accept the reference to the extent of quashing the fine for future breaches and the order of the Magistrate directing the applicant to do the work. A court of law cannot compel a man to execute work and this part of the order must be quashed. As I have pointed out, the authorities should do it and charge the owner with the costs. The fine for the original breach must be upheld.

Order modified.

APPELLATE CIVIL.

Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal

MUHAMMAD MUIN-UD-DIN AND ANOTHER (DEFENDANTS) *v.* JAMAL FATIMA (PLAINTIFF).*

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May, 13.

Act No. IX of 1872 *(Indian Contract Act), section* 23—"*Public policy*"—*Ante-nuptial agreement to provide for wife's maintenance in case of dissensions between the parties.*

Held that an ante-nuptial agreement entered into between the prospective wife on the one side and the prospective husband and his father on the other (the parties being Muhammadans) with the object of securing the wife against ill-treatment and of ensuring her a suitable amount of maintenance in case such treatment was meted out to her, was not void as being against public policy. *Bai Fatma* v. *Alimahomed Aiyab* (1) distinguished.

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

Mr. *S. Abu Ali*, for the appellants.

Maulvi *Iqbal Ahmad*, for the respondent.

LINDSAY and KANHAIYA LAL, JJ.:—The question for consideration in this case is whether an ante-nuptial agreement made between a lady and her prospective husband and her prospective father-in-law, providing for the payment of a certain maintenance in the event of future dissensions between her and

* Second Appeal No 819 of 1919 from a decree of Abdul Ali Khwaja, Subordinate Judge of Budaun, dated the 9th of December, 1918, confirming a decree of Muhammad Junaid, Munsif of East Budaun, dated the 9th of May, 1918.

(1) (1912) I L. R., 37 Bom., 280.

her prospective husband, is good in law and enforceable after her divorce or is opposed to public policy and void. The courts below found that the agreement was not opposed to public policy and granted the plaintiff a decree for the amount claimed by her. It appears that Mehdi Hasan, the husband of the plaintiff, had married twice before, and on each occasion he seems to have ill-treated his wife. The father of the plaintiff was, therefore, naturally anxious that something should be done in order to protect his daughter from similar ill-treatment and to secure for her a maintenance allowance in case his daughter and Mehdi Hasan could not live happily together. The agreement in question provided that in case of dissension or disunion the prospective husband and his father should be bound to pay an allowance of Rs. 15 per month, in addition to the dower debt, to the lady *for her life*; and certain property was hypothecated to secure the payment of that allowance. It is common ground that the plaintiff was divorced by her husband on the 14th of August, 1917, and a formal deed of divorce was executed and registered some months later. But long before that date differences had apparently cropped up between them. The lady had gone back to the house of her father in 1912 and a notice was sent by the husband to the father of the plaintiff on the 30th of October, 1912, couched in insolent terms and demanding that the plaintiff should be sent back to his house with her jewelry. There was other evidence, too, to show that there had been dissensions between the plaintiff and her husband from about that time. On that evidence the courts below awarded to the plaintiff the allowance mentioned in the agreement from the 30th of October, 1912.

The learned counsel for the appellants contends, on the authority of the decision in *Bai Fatma* v. *Alimahomed Aiyeb* (1), that the agreement was unenforceable; but that was a case in which a person, who had a wife living and wanted to marry another, had entered into an agreement with his first wife that he would pay her a certain allowance as maintenance if any disagreement took place between her and him thereafter. The agreement in that case was treated as opposed to public policy,

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because it encouraged a separation between the husband and his wife. The agreement in the present case was executed before marriage in order to restrain the prospective husband from ill-treating his wife or behaving improperly towards her or capriciously turning her out. The dower debt payable to the plaintiff was undoubtedly some security against a capricious divorce, but that was evidently not considered enough to protect her from ill-treatment; and the agreement in question was obtained to secure her against ill-treatment and to ensure for her a suitable amount of maintenance in case such treatment was meted out to her. In view of the circumstances established, we do not consider that the agreement in the present case offended against the provisions of section 23 of the Indian Contract Act (No. IX of 1872) or encouraged or facilitated a separation between the plaintiff and her husband. The material rights ended with the divorce; but the contract subsists till the plaintiff dies or breaks it, and so long as the right to maintenance lasts, it cannot be treated as devoid of consideration or opposed to public policy. The finding of the court below that the dissensions existed from the 30th of October, 1912, is conclusive and cannot be disturbed in second appeal. The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Sulaiman.

1921
May, 12.

LACHMAN PRASAD (PLAINTIFF) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT).*

Act No. I of 1894 (Land Acquisition Act), section 9—Claim of owner filed beyond time fixed, but no objection raised before Collector—Objection not entertainable in appeal.

In a case under the Land Acquisition Act, the owner's claim was not filed until after the period prescribed therefor, but no objection was taken on that score before the Collector. *Held* that it was too late to raise the objection when the case had come in appeal before the District Judge.

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

Munshi *Gulzari Lal*, for the appellant.

Babu *Lalit Mohan Banerji*, for the respondent.

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* First Appeal No. 316 of 1918 from a decree of E. H Ashworth, District Judge of Cawnpore, dated the 5th of June, 1918.