

same, and no property was taken by way of compensation. There was no necessity for the guardian to give up the minors' claim at all. He need not have contested the application for mutation of names if he was not prepared to fight out the matter. No registered deed was executed. The main question before the revenue court was whose name should be entered in the revenue papers for fiscal purposes. No attempt was made by the guardian to obtain the sanction of the revenue court for entering into a compromise on behalf of the minors nor was he a certificated guardian of the minors. He was merely acting as their next friend. In these circumstances we cannot hold that the minors were bound by the act of the guardian, and that the plaintiff is now estopped from claiming a share because her guardian did not press for her rights in the revenue court.

The appeal is accordingly allowed, the decree of the learned Judge of this Court is set aside, and that of the lower appellate court restored with costs.

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Bennet*

SOBHA RAM (PLAINTIFF) *v.* TIKA RAM (DEFENDANT)*

Seduction of a wife—Enticing away a wife and attempt at seduction—Actionable wrong—Loss of society and services—Husband's suit for damages—Limitation Act (IX of 1908), articles 22, 120.

The enticing away of a wife by a third person is an infringement of the absolute right of the husband to the benefit of the society and services of the wife, and the husband can maintain a suit for damages for such actionable wrong. It is immaterial that at that time the husband may have been away at another town; it is not the mere depriving of a husband for a day or two of the society of his wife which gives rise to the action, but the fact that the defendant has acted in a way towards the wife of the plaintiff which is an infringement of the plaintiff's rights under the contract of marriage. The case of a wife, therefore,

1936

JAFFO
v.
CHITTA

1936
February, 15

*Appeal No. 50 of 1935, under section 10 of the Letters Patent.

1936

SOBHA
RAM
v.
TIKA
RAM

stands on a different footing from that of seduction of a daughter or a servant.

The husband's suit for damages is not governed by article 22 of the Limitation Act, not being a case of injury to the person of the plaintiff, but by article 120.

Messrs. *Baleshwari Prasad* and *G. S. Pathak*, for the appellant.

Mr. *B. Malik*, for the respondent.

SULAIMAN, C.J., and BENNET, J.:—This is a Letters Patent appeal from the decree of a learned single Judge dismissing the suit of the plaintiff. The plaintiff brought a suit for damages against the defendant on the ground that the defendant had enticed away the wife of the plaintiff, while the plaintiff was at Calcutta. The home of the plaintiff and of the defendant is in a village in tahsil Bah of Agra district, and the plaintiff alleged that his wife had been taken away by the defendant from that village to another village under the pretext that she would be carried away to Calcutta, and had been locked up in the house of the defendant, and the defendant had attempted to have sexual intercourse with her, and that an alarm being raised the defendant ran away. The plaintiff then came from Calcutta. The defence was a denial that the defendant had taken any part in the matter. The plaintiff in the first instance went to the criminal court under section 498 of the Indian Penal Code, and the defendant was convicted and sentenced to a fine of Rs.50. The two civil courts below have held that the facts alleged by the plaintiff were established, and have held that the enticement of the wife of the plaintiff is a ground for awarding damages to the plaintiff, and have awarded Rs.400 against the defendant. The learned Judge of this Court has referred to various rulings of English courts and various books on law which deal with the action of seduction, and especially that action in regard to the seduction of a daughter or a servant of the plaintiff. We are of the opinion that the question of the action of seduction of a daughter or a servant has no bearing

on the present case. In our opinion the husband has a right to the society of his wife, and the infringement of that absolute right by any other person is a tort. It does not matter that in this particular case the husband was at the time of the acts complained of in Calcutta, and that he was not present. It is not the mere depriving of a husband for a day or two of the society of his wife which gives rise to this action; it is the fact that the defendant has acted in a way towards the wife of the plaintiff which is illegal, and which he is not entitled to do.

In Halsbury's Laws of England, second edition, volume 16, it is laid down in paragraph 957: "If a third person, without just cause, persuades or entices a wife to live apart from her husband . . . that person commits an actionable wrong for which the husband is entitled to recover damages." In paragraph No. 958 it is stated: "A husband may also maintain an action for damages for the loss of the society or services of his wife against a third person in respect of any other wrongful act whereby he is deprived of the benefit of such society or services." The case of a wife stands on a different footing from that of a servant or daughter because there is a contract of marriage between the husband and the wife. The action of the defendant infringed that contract of marriage, and on account of the infringement of that contract the husband is entitled to damages. Learned counsel for the defendant objected to the wording of paragraph 8 of the plaint in which it was stated that "The above acts of the defendant were highly improper, against the etiquette of society and unlawful; the plaintiff was thereby greatly defamed and disgraced, was put to much shame, had to suffer humiliation, was put to considerable expense and worry and suffered great loss in business also in other ways." We consider that the wording of this paragraph is a very fair summary of the grounds on which a plaintiff may bring an action of this nature. Moreover, it is to be

1936

SOBHA
RAM
v.
TIKA
RAM

noted that the Penal Code provides in section 498 for a complaint to be brought against a person who entices away any married woman with intent that she may have illicit intercourse with any person. The action of the defendant was therefore a crime against the section and has been so found by the court. It is provided in the Criminal Procedure Code, section 199, that no court shall take cognizance of an offence under section 498 of the Indian Penal Code except upon a complaint made by the husband of the woman or certain other persons in his absence; that is, the criminal law recognizes that this particular offence of section 498 of the Indian Penal Code is an offence which is specially directed against a husband, and that a husband is a person aggrieved by such an offence. If, therefore, the matter is an offence against the husband in the penal law, it must also be a tort against that husband in civil law, which will entitle him to sue for damages. No ruling or authority has been shown to us by the learned counsel for the defendant which would entitle us to hold that the plaintiff would not be entitled to damages in a case like the present.

There has been some discussion in regard to the plea of limitation, and the learned single Judge was under the impression that article 22 of the Limitation Act would apply. That article prescribes a period of one year for compensation for any other injury to the person. Injuries to person mean physical injuries to the plaintiff. This is not a case for injury to the person of the plaintiff. We are of the opinion that the proper article is 120, the article for suits for which no period of limitation is provided elsewhere in the schedule, and the period for that article is six years. The suit was brought well within that period and therefore it is not barred by limitation.

For these reasons we allow this Letters Patent appeal with costs throughout and restore the decree of the lower appellate court.