

## APPELLATE CIVIL.

1882  
January 3.*Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.*

NASRAT HUSAIN (PLAINTIFF) v. HAMIDAN AND OTHERS (DEFENDANTS).\*

*Muhammadan Law—Husband and wife—Shia—Sunni—Suit for recovery of wife—Dower.*

A woman of the Sunni sect of Muhammadans marrying a man of the Shia sect is entitled to the privileges secured to her married position by the law of her sect, and does not thereby become governed by the Shia law.

*Held*, therefore, where a husband sued to recover his wife, the one being a Shia, and the other a Sunni, that, the wife's dower being "exigible" dower, and not having been paid, the suit was not maintainable under Sunni law.

THE plaintiff in this suit, a Muhammadan of the Shia sect, claimed to recover possession of his wife, the defendant Hamidan, with whom he had cohabited for some years. The latter, who was a Sunni, set up as a defence to the suit that the plaintiff had not paid her her dower, amounting to Rs. 5,000, and until he did so, the suit was not maintainable; and that the plaintiff was a person of immoral and violent character, and had treated her with cruelty, and she was in apprehension of danger to her life if she returned to him. The plaintiff asserted that the defendant's dower was Rs. 500, and the same had been paid to her, and denied that he had been guilty of cruelty to her. The Court of first instance framed the following, among other, issues for trial, *viz.*, "Was the dower of the defendant Hamidan Rs. 500, and has that sum been paid to her, or was it Rs. 5,000, and has that sum been paid to her, and in the latter event, is the claim for possession of the defendant Hamidan valid?" and "What is the plaintiff's public and private character, and how did he cohabit with the defendant Hamidan, and whether, with reference to his conduct towards her, she should be compelled to live with him or not?" The Court of first instance, as regards the first issue, decided that the defendant's dower was Rs. 5,000, that it was exigible and not deferred dower, and that it had not been paid to her; and, following the law governing the Sunnis, held that under these circumstances the plaintiff's suit was not maintainable. As regards the second issue, the Court decided that

\* Second Appeal, No. 628 of 1881, from a decree of R. M. King, Esq., Judge of Saharanpur, dated the 10th January, 1881, affirming a decree of Maulvi Nasr-ul-lah Khan, Munsif of Saharanpur, dated the 5th November, 1880.

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the defendant's life would be endangered were she to return to the plaintiff, and it therefore held that she could not be compelled to return to him. In accordance with its decision on these issues the Court dismissed the suit. On appeal by the plaintiff the lower appellate Court affirmed this decree.

On second appeal to the High Court it was contended that the law governing Sunnis should not have been applied in this case, but that governing Shias.

Pandit *Nand Lal* and *Munshi Kashi Prasad*, for the appellant.

Mr. *Conlan*, Pandit *Ajudhia Nath*, *Lala Lalta Prasad*, and *Shah Asad Ali*, for the respondents.

The judgment of the Court (BROD<sub>H</sub>URST, J. and TYRRELL, J.) was delivered by

TYRRELL, J.—The pleas in appeal fail. It is found as a fact that the respondent is a Sunni, and as such she is entitled to the privileges secured to her married position by the law of her sect. No authority has been cited to us for the theory that a Sunni woman contracting marriage with a Shia becomes thereby governed by the Shia law. Apart from these legal considerations, we see no reason for disturbing the decrees of the Courts below on the merits. The respondent made out a case for protection against proved risk to her personal health and safety, and we are satisfied that the Courts below have rightly exercised their discretion in refusing the plaintiff the relief he claimed. The appeal is dismissed with costs.

*Appeal dismissed.*

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*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

MATHURA DAS AND OTHERS (PLAINTIFFS) v. MITCHELL AND ANOTHER  
(DEFENDANTS).\*

*Registration—Unregistered conveyance—Bond confirming conveyance—Registration of conveyance instead of bond—"Defect of procedure"—Act III of 1877 (Registration Act), ss. 58—60, 87—Claim to attached property—Suit to establish judgment-debtor's right—Burden of proof.*

A decree-holder sued to establish that certain property was the property of W his judgment-debtor, such property being claimed by A as his. He proved that

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\* First Appeal, No. 14 of 1881, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 9th September, 1880.