

was a suit between the same parties as the present. We think that this question must be answered in the affirmative. Both parties to the present suit were parties to the former one; and although in the former they nominally stood together in the same array,* yet as a fact they were opposed to each other, Shadal Khan being on the side and supporting the case of his mother, the plaintiff, and Amin-ul-lah Khan being the true defendant in the cause. With reference to the above considerations and reasons we hold that the finding of the lower appellate Court is erroneous. The decree of the lower appellate Court is reversed, that of the Court of the Subordinate Judge of Meerut is restored, and this appeal is decreed with costs.

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Appeal allowed.

Before Sir Robert Stuart, Rt., Chief Justice, and Mr. Justice Oldfield.

RAM LAL (DEFENDANT) v. TULA RAM (PLAINTIFF).*

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August 15.

Suit by Hindu father for compensation for the loss of his daughter's services in consequence of her abduction—Compensation for costs of prosecuting abductor—Res judicata—Act X of 1877 (Civil Procedure Code), s. 13.

A Hindu sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant, and for the costs incurred by him in prosecuting the defendant criminally for such abduction. The defendant was convicted on such prosecution. *Held* that the decision of the Criminal Court did not operate under s. 13 of Act X of 1877 to bar the determination in such suit of the question whether the defendant had or had not abducted the plaintiff's daughter. Also that the plaintiff was entitled to recover the costs of such criminal proceedings.

The daughter in this case was a married woman, who had been deserted by her husband, and at the time of her abduction was living with the plaintiff her father.

Held by STUART, C. J., that the suit by the father for compensation for the loss of his daughter's services in consequence of her abduction was under the circumstances maintainable.

Held by OLDFIELD, J., that a suit by a Hindu father for the loss of his daughter's services in consequence of her abduction is not maintainable.

The plaintiff in this suit claimed, *inter alia*, Rs. 1,000, as compensation for injury to his reputation and for the loss of his

* Second Appeal, No. 63 of 1880, from a decree of D. M. Gardner, Esq., Judge of Agra, dated the 6th August, 1879, modifying a decree of Maulvi Maqsood Ali Khan, Subordinate Judge of Agra, dated the 18th April, 1879.

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daughter Batasia's services, in consequence of her abduction by the defendant, and Rs. 300 the costs incurred by him in prosecuting the defendant criminally for such abduction. The defendant set up as a defence to the suit, *inter alia*, that he had not abducted the plaintiff's daughter. It appeared that Batasia, the plaintiff's daughter, was a married woman, and that her husband had deserted her, and that she had lived with her father from the time of her husband's desertion. It also appeared that the defendant and certain other persons had been criminally prosecuted by the plaintiff for abducting Batasia from his house, and that the defendant had been convicted of that offence, and punished with imprisonment and fine. The Court of first instance found, on evidence recorded by it and on the evidence recorded in the criminal proceedings against the defendant, that the defendant had abducted the plaintiff's daughter from his house; and it gave the plaintiff a decree for Rs. 500 for the injury to his reputation caused thereby, and dismissed his other claims. On appeal by the defendant it was contended on his behalf, *inter alia*, that it was not proved that he had abducted the plaintiff's daughter. The lower appellate Court held that, as the Criminal Court had decided that the defendant had abducted the plaintiff's daughter, the question whether he had or had not done so was, regard being had to the provisions of s. 13 of Act X of 1877, *res judicata* and could not be re-opened. It also held that the plaintiff's claim for compensation for injury to his reputation in consequence of his daughter's abduction by the defendant was not maintainable, and moreover that it was not shown that the plaintiff's reputation had suffered thereby; but that the plaintiff was entitled to compensation for the loss of his daughter's services, and to recover the costs incurred by him in his criminal proceedings against the defendant. It accordingly gave the plaintiff a decree for Rs. 200 for the loss of his daughter's services, and Rs. 300 the costs incurred by him in prosecuting the defendant.

On second appeal by the defendant it was contended on his behalf that the question whether he had or had not abducted the plaintiff's daughter was not *res judicata*, by reason that the Criminal Court had already decided such question; that the claim for the costs incurred by the plaintiff in prosecuting the defendant

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were not recoverable by suit; that a claim by a father for compensation for the loss of his daughter's services by reason of her abduction was not maintainable; and that the plaintiff could not maintain such a claim, as his daughter's husband was alive.

Mir *Zahur Husain*, for the appellant.

Mr. *Conlan* and *Babu Ratan Chand*, for the respondent.

The Division Bench (STUART, C. J., and OLDFIELD, J.) before which the appeal came for hearing, by an order dated the 19th May, 1880, remanded the case to the lower appellate Court to try the issue whether the defendant had or had not abducted the plaintiff's daughter, the order of remand being as follows:—

OLDFIELD, J.—The lower appellate Court must decide in this suit whether or not the defendant did abduct the plaintiff's daughter as alleged. The judgment of the Criminal Court does not operate to prevent the Civil Court from determining the issue under s. 13 of Act X of 1877 as amended. This issue is remitted accordingly to the lower appellate Court for trial.

The lower appellate Court found that the defendant had abducted the plaintiff's daughter as alleged. On the return of this finding the High Court (STUART, C. J., and OLDFIELD, J.) delivered the following judgments:—

STUART, C. J.—This is an appeal from a decree by the Judge of Agra, by which he allowed damages to the extent of Rs. 500 and costs to the plaintiff against the defendant for the abduction and seduction of his the plaintiff's married daughter, and at the hearing I expressed some doubts as to whether such a suit would lie. But on further consideration I have arrived at the conclusion that on the facts before us this suit may be maintained and damages claimed. Both Courts have recognized the principle of such a claim and have awarded damages; the Judge simply modifying the order, but in amount allowing the sum which was decreed by the first Court.

The counsel for the respondent referred us to an English case, that of *Harper v. Luffkin* (1), where Lord Tenterden, C. J., on a motion for a new trial, held that the father was a sufficient plaintiff

(1) 7 Barn. & Cress. 387.

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in the action, and the verdict for damages in his favour was upheld. Such a ruling, however, proceeded on the fiction that the daughter, though a married woman, might still under the circumstances be considered as her father's servant, his Lordship observing: "Unless he (the husband) interferes, it by no means follows that such a relation (that of master and servant) may not exist, *especially as against third persons who are wrong-doers.*" The last words appear to recognize a principle of parental or family authority which might be usefully applied to the present case; but the English theory on which the remedy for such a wrong as that of seduction of a young woman is based is a theory I do not find to have any place in the law of this country, and I am certainly not inclined in any way to encourage its introduction into the legal system of India; and in other European countries, that is, in European countries other than England, the remedy is afforded on the much more intelligible ground of being a wrong to the woman herself, as for example, in the law of Scotland at the present day, in which country the woman needs no help from her father or other relation, but may sue directly for the wrong done to her, that is of course, where she is of the proper age for maintaining a suit of the kind. But the present case is that of a minor deserted by her husband, and taking refuge in her father's house, where she continued to reside; and it seems to me reasonable and just that the father should under the circumstances be allowed to complain of the seduction of his daughter to a Court of Justice, especially in such a case as the present, seeing that the parental control and authority of a father in India over his children do not appear to be so entirely destroyed as it is in England in the case of a married daughter, but which control and authority are in this country retained by the father to a considerable extent, and recognized whenever circumstances may bring him and his daughter together domestically. Here, according to the finding returned to us by the Judge, the daughter had been married ten years, and was very young at the time of her marriage, and during seven of these years her husband had been away from her in another and distant part of the country, and it was not known, when the present suit was brought, whether he was dead or alive. On being so deserted by her husband she naturally sought refuge in her father's house, became domesticated

with him, and, her mother being dead, she attended to her father's household affairs, and it was while thus under the protection of her father, and rendering him such services as I have indicated, that she was abducted away by the defendant and seduced. Now it appears to me that it would be a very unsatisfactory state of the law in this country if such conduct against the peace and honor of respectable families were allowed to pass without a remedy, and I think we must for that remedy hold that the suit at the instance of the father was properly and validly entertained by the lower Courts. My colleague Mr. Justice Oldfield and I have considered the question as to the amount of damages. The Judge has assessed these at Rs. 500, but I agree with my colleague that the damages might be reduced by Rs. 200, thus leaving Rs. 300 to be recovered by the plaintiff. To this extent therefore I would modify the decree of the lower appellate Court, and in other respects dismiss the appeal with proportionate costs in all the Courts.

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OLDFIELD, J.—The plaintiff is the father of Batasia, a married woman, who has been deserted by her husband for some years, and since the desertion she lived with her father until she was abducted from his house by the defendant with whom she has since resided. The plaintiff prosecuted the defendant in the Criminal Court for the abduction, and obtained his conviction and punishment, and he has now brought this suit to recover damages, and he claims them for the injury to his reputation, for the loss of his daughter's services, and for the value of certain jewels taken with her, together with the costs which he incurred in the criminal prosecution. The Court of first instance gave a decree for damages to the amount of Rs. 500 due to loss of reputation and dismissed the rest of the claim. Both parties appealed to the Judge, who disallowed the damages decreed by the first Court, but awarded Rs. 300 as costs of the criminal prosecution and Rs. 200 for the loss by the plaintiff of the services of his daughter. The defendant has preferred an appeal to this Court.

The decree in respect of the recovery of the costs of the criminal prosecution seems unopen to objection. The plaintiff's daughter, after her husband's desertion of her, had her home with her father, whose duty it was to protect her, and to bring to justice

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the man who had abducted her, and he is entitled to recover from the latter the costs of the prosecution. The claim, however, in respect of the loss of the daughter's services stands on quite a different footing. It has evidently been brought with reference to the law of England as to an action for seduction, where the basis of the action is founded, not upon the wrongful act of the defendant in the seduction, but upon the loss of service of the daughter, in which service the parent is supposed by a fiction to have a legal right or interest.—Broom's Commentaries, 3rd edition, pp. 77 and 836. It would be very undesirable to introduce a fiction of this kind into the law of this country. The plaintiff cannot be allowed to maintain a suit on a contract for service which is not seriously asserted, nor indeed found to exist in fact, and which is not consonant with Hindu customs. Hindu women are no doubt dependent to a great extent on their male relatives, and they have certain household duties which they are expected to perform, but their position is not one of servitude, from which any contract of service can be implied. I would modify the decree of the Judge by disallowing the sum of Rs. 200 decreed as damages for loss of service, with proportionate costs in all Courts.

Decree modified

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August 23.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Dutkoit.

BIRJ MOHAN SINGH AND OTHERS (PLAINTIFFS) v. THE COLLECTOR OF ALLAHABAD AS PRESIDENT OF THE MUNICIPAL COMMITTEE OF ALLAHABAD (DEFENDANT).*

Suit against Municipal Committee—Claim for a declaration of right—Limitation—Act XV of 1873 (N.-W. P. and Oudh Municipalities Act), s. 43—Act XV of 1877 (Limitation Act), sch. ii, No. 120.

The lessee of certain land belonging the plaintiffs, situate within the limits of a Municipality, applied to the Municipal Committee for permission to establish a market on such land, and such permission was refused by the Committee on the 26th November, 1878. Meanwhile the plaintiffs, in behalf of the lessee and in their own behalf as proprietors of such land, applied to the Committee for such permission, sending such application by post. No orders were passed by the Committee on such application because it had come by post. On the 18th April, 1879,

* Second Appeal, No. 1366 of 1880, from a decree of R. D. Alexander, Esq., Judge of the Small Cause Court, Allahabad, exercising the powers of a Subordinate Judge, dated the 18th September, 1880, affirming a decree of Babu Mrittonjoy Mukarji, Munsif of Allahabad, dated the 30th September, 1879.