

the murder of Baiji. We confirm the conviction and sentence of Bhagirath for the murder of Ganga Das, and direct that it be carried into execution. We also order that the record in this case be amended by quashing the conviction of the accused under s. 397 of the Penal Code, a conviction under s. 302 for the murder of Baiji being substituted therefor. Having regard to the sentence already confirmed, it is unnecessary to make any order as to punishment in respect of this second conviction.

1880

EMPEROR OF
INDIA
v.
BHAGIRATH.

CIVIL JURISDICTION.

1881
January 3.

Before Mr. Justice Spankie and Mr. Justice Straight.

MADDA (PLAINTIFF) v. SHEO BAKHSR (DEFENDANT).*

*Remarriage of Hindu Widow—Custom—Breach of Contract—Act XV of 1877
(Limitation Act), sch. ii, Nos. 115, 120.*

The plaintiff sued the defendant, who had married the plaintiff's deceased brother's widow, to recover, by way of compensation, the money expended by his deceased brother's family on his marriage, founding his claim upon a custom prevailing among the Jats of Ajmere, whereby a member of that community marrying a widow was bound to recoup the expenses incurred by her deceased husband's family on his marriage. *Held* that the suit was one of the character described in No. 115, sch. ii. of Act XV of 1877, and not in No. 120 of that schedule, and the period of limitation was therefore three and not six years.

THIS was a reference to the High Court by the Judges of the Small Cause Courts at Ajmere and Nasirabad. The statement of the facts of the case and the point on which doubt was entertained was as follows :—

“The plaintiff in this case sued for recovery of Rs. 300 as compensation payable to him by the defendant in consequence of the latter having contracted a marriage with the widow of the plaintiff's deceased brother Surta; plaintiff alleging that the remarriage took place in the month of Asárh 1933 (June, 1876, A.D.). Defendant pleaded, among other things, that the suit was barred, the remarriage having taken place six years ago. The present suit was instituted on the 13th July, 1880. Defendant con-

* Reference, No. 8 of 1880, by Pandit Bhag Ram, Judge of the Court of Small Causes at Ajmere, and Captain A. P. Thornton, Judge of the Court of Small Causes at Nasirabad.

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tends that it is governed by No. 115, sch. ii, Act XV of 1877. Plaintiff avers that No. 115 applies only to compensation for breach of contract express or implied, and that the present suit is governed by No. 120, sch. ii of Act XV of 1877, it being a suit for recovery of compensation, accrued to the plaintiff in consequence of defendant having remarried the widow of plaintiff's deceased brother, the suit not resting on any contract, but on the local custom prevailing among the Jats of Ajmere. We are of opinion that the suit involves a question of law which requires an authoritative ruling by the High Court, North-Western Provinces.

“The following question is, therefore, submitted for a ruling :—
Is a suit for recovery of compensation, alleged to be payable by the defendant in consequence of the latter remarrying the widow of plaintiff's deceased brother, governed by No. 115, sch. ii, Act XV of 1877, or by No. 120, sch. ii, Act XV of 1877. The existence of a custom to the effect stated in the plaint is admitted by the defendant: the claim to compensation appears to be founded on the theory that, when a person remarries a widow, he is bound to repay the expenses incurred in the original marriage to the relatives of the deceased husband. As a rule no remarriage takes place until this necessary condition is fulfilled. We are, therefore, of opinion that the suit is governed by No. 115, Act XV of 1877, as the contract of remarriage implies immediate payment of compensation, and non-payment of such compensation is clearly a breach of the contract in pursuance of which the remarriage is effected.”

The parties did not appear.

The High Court (SPANKIE, J., and STRAIGHT, J.,) delivered the following judgments :—

SPANKIE, J.—No. 120, sch. ii, Act XV of 1877 can only apply where no period of limitation is provided elsewhere in the second schedule for a suit. I understand, however, that a local custom exists amongst the Jats of the Province of Ajmere to the effect that, on a man's marrying a widow, her deceased husband's friends may claim from that man to reimburse to them the expenses incurred at

the original marriage. The custom is so well known that we are told by the referring Judges that, as a rule, no remarriage of a widow is celebrated until this necessary condition, the reimbursement of the past marriage expenses, has been fulfilled. The custom then is so notorious that it may be said to become part of the marriage contracts in cases in which members of the brotherhood elect to marry widows of the brotherhood. The contract of marriage is admitted in this case. The local usage is admitted. It is not pretended that the parties have so contracted as to exclude the operation of this usage or custom. This usage being a part of the marriage contract, one of the parties to it has committed a breach thereof by not reimbursing the other party for the expenses of the original marriage, and the present suit is brought to recover as compensation the money spent in the former marriage. The claim is one which I would say falls under No. 115, sch ii of the Indian Limitation Act. It is for the local Courts to determine whether or not the suit is barred by limitation under No. 115.

STRAIGHT, J.—I assume it has been clearly and accurately ascertained that the custom mentioned in the order of reference is of ancient origin, and that it has been uniformly and continuously recognised and acted upon among the Jats of Ajmere. If this be so, then there undoubtedly exists among them an implied obligation in the nature of a contract on the part of each member of the community to the remainder, in the event of his marrying the widow of the deceased brother of any one of them, immediately before, or upon such remarriage, to recoup the expenses incurred by the husband's family in respect of her first marriage. The plain character, therefore, of the present suit is compensation in damages for breach of the implied obligation or contract to repay the outlay incurred by the plaintiff and his family in and about the first marriage of the defendant's now wife, and it naturally falls into No. 115, Act XV of 1877. The view of the Judges of the Small Cause Court was a correct one, and three years' limitation from date of breach is the period applicable. When that breach took place, and if it is continuing, is for the local Courts to decide.

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 MADDA
 P.
 SHED
 BAKSHI.