

refused to re-admit it. The judgment-debtor subsequently appealed to the High Court from the order striking off the appeal for his default.

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 MURTHI
 v.
 FARRER.

Mr. *Niblett* and *Lala Jokhu Lal*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*), for the respondent.

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

STRAIGHT, J.—The only appeal before us relates to the order passed by the Judge under s. 556 of the Civil Procedure Code, striking off the appeal for default in appearance of the appellant either in person or by pleader. The proper course for the appellant to have pursued was to apply to the lower appellate Court under s. 558 for re-admission of his appeal, and this he seems to have done, and an order was passed refusing his application. This order is neither before us, nor indeed is it appealed, and we cannot consider it. All we have to do with is the order striking off the appeal for default, and this, in our opinion, is not open to second appeal. For the “order,” though it means the formal expression of the Court’s decision in respect of the default of the appellant, does not come within the definition of decree in s. 2 of the Civil Procedure Code.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Pearson and Mr. Justice Straight.

EMPRESS OF INDIA v. BHAGIRATH.

Murder—“Corpus delicti”—Act XLV of 1860 (Penal Code), s. 302.

The mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder.

THIS was a reference to the High Court by Mr. W. C. Turner, Sessions Judge of Agra, for confirmation of the sentence of death passed by him on one Bhagirath convicted of the murder of one Ganga Das. Bhagirath had been also charged before the Sessions Judge at the same time with the murder of Ganga Das’ wife,

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Baiji. It appeared from the evidence that he had murdered and robbed Baiji, but the Sessions Judge did not convict him of Baiji's murder, as her body had not been discovered ; but convicted him, under s. 397 of the Indian Penal Code, of robbing and causing grievous hurt to her.

The High Court (PEARSON, J., and STRAIGHT, J.,) made the following order :—

STRAIGHT, J.—Upon the facts there was no course open to the Sessions Judge but to convict the accused of the murder of Ganga Das, and to sentence him to death. The evidence was conclusive and overwhelming and left no doubt of his guilt. We are constrained, however, to remark upon a passage in the judgment of the Sessions Judge which, proceeding as it does upon a misconception of the law, must be corrected. He says : “The presumption is that Baiji was certainly killed, but no trace of her body has been found, and, therefore, I doubt if, in her case, the charge of murder can be sustained.” We must most unhesitatingly and distinctly point out to the Judge that it is not imperatively essential, in order to justify a conviction for murder, that the “*corpus delicti*” should be forthcoming. To recognise any such condition precedent, as being absolutely necessary to conviction in all cases, would be to afford complete immunity and certain escape to those murderers who are cunning or clever enough to make away with or destroy the bodies of their victims. Such a principle once admitted would in some instances render the administration of justice impossible. The doubt of the Sessions Judge was an altogether ill-founded and erroneous one, and the mere circumstance that the body of Baiji had not been found was a most inadequate reason upon which to refuse to convict the accused of her murder. Apart from Bhagirath's own confession of having killed the woman Baiji, there is cogent and convincing proof of his guilt and of her death by violence at his hands. Whatever might have been the view of this Court as to the desirability of carrying out a capital sentence under such circumstances is another matter, which need not now be discussed, but so far as the Judge was concerned he should have had no hesitation in convicting Bhagirath under s. 302 of the Penal Code for

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.

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CIVIL JURISDICTION.

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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.