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public interest, but as a means of exerting pressure to extract money from an agent, is to be discouraged. I say nothing about the civil liability of Rangi Lal or his father Brij Bihari Lal, but I am not satisfied that the charge under section 408 of the Indian Penal Code is made out against Rangi Lal. He should at all events be given the benefit of doubt.

Raza, J.

The result is that I accept the application for revision and setting aside the conviction and sentence of Rangi Lal direct that he be acquitted and released. His bail bond may be discharged.

Revision accepted.

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice A. G. P. Pullan.

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April, 14,

RAM PEAREY (PLAINTIFF-APPELLANT) v. MUSAMMAT KAILASHA (DEFENDANT-RESPONDENT)*

Hindu Widows Remarriage Act (XV of 1856), sections 2 and 6—Remarriage of a Hindu Widow alleged to be in the Brahma *form not proved—Widow having an illicit connection with another man—Child born of the illicit connection—Forfeiture of her husband's property—Remarriage of a Hindu widow, ceremonies and rites necessary to be proved—Plaintiff setting up remarriage in a particular form—Finding that remarriage in the alleged form not proved—Plaintiff, whether entitled to set up remarriage in another form.*

Where the remarriage of a Hindu widow in the *Brahma* form as alleged was held not to be proved, the fact that an illicit connection had sprung up between her and another person and a child was born as a result of it was not sufficient to establish a remarriage within the meaning of the Hindu Widows Remarriage Act.

*Second Civil Appeal No. 25 of 1930, against the decree of Saiyid Shaukat Husain, Subordinate Judge of Unao, dated the 16th of October, 1929, confirming the decree of Babu Gulab Chand Srimal, Munsif, Purwa at Unao, dated the 13th of February, 1929.

Where in the pleadings the plaintiff set up a remarriage in the *Brahma* form and it was found by both the two courts below that remarriage in that form was not proved, it was not open to the plaintiff to set up an entirely new case in second appeal and allege remarriage in the *Gandharva* form.

According to section 6 of the Hindu Widows Remarriage Act, 1856, in the case of the remarriage of a Hindu widow the same ceremonies and religious rites should have been observed wich were necessary to consititute a valid marriage in her case.

Mr. *Ram Bharosey* Lal, for the appellant.

Mr. *J. N. Misra*, for the respondent.

SRIVASTAVA and PULLAN, JJ. :—This is a second appeal by the plaintiff who has been unsuccessful in both the lower courts. It arises out of a suit for possession on the allegation that the defendant Musammat Kailasha succeeded to the property in suit on the death of her son Kali Charan and was in possession of it as a Hindu mother, that she contracted a remarriage with one Har Charan on the 27th of January, 1928, that as a result of this remarriage she has forfeited all her rights in the said property under section 2 of the Hindu Widows Remarriage Act (XV of 1856) and that the plaintiff who is the next reversioner to the property of Kali Charan is entitled to a decree for possession in his favour. The defendant denied the alleged remarriage and the only question in issue between the parties was as regards the *factum* of the remarriage. The plaintiff led evidence to show that Musammat Kailasha was married to Har Charan according to the ordinary *Brahma* form and that there were priests who officiated at the marriage.

Both the lower courts have disbelieved the evidence and held the remarriage not proved. They have found that some years before the alleged remarriage an illicit connection had sprung up between Musammat Kailasha

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and Har Charan and that a child was also born as a result of it.

The learned counsel for the plaintiff-appellant has argued before us that the fact that Musammat Kailasha and Har Charan lived as husband and wife and had a child born of the intercourse between them was sufficient to establish the remarriage of Musammat Kailasha within the meaning of the Hindu Widows Remarriage Act. He has referred to the eight forms of marriage mentioned by Manu and has contended that the connection between Kailasha and Har Charan should be regarded as a marriage in the *Gandharva* form. Referring to Mayne's Hindu Law, 9th edition, page 94, he has pointed out that "the reciprocal connection of a youth" and a damsel with mutual desire is the marriage denominated *Gandharva*, contracted for the purpose of amorous embraces, and proceeding from sensual inclination." We think that the contention has no force. In the first place it is clear from the pleadings that the plaintiff set up a remarriage in the *Brahma* form such as is prevalent amongst the Brahmans. There was no suggestion in any of the courts below of a *Gandharva* marriage. Admittedly Musammat Kailasha and Har Charan are both Kankubja Brahmans. The evidence led on behalf of the plaintiff was also to the same effect. They examined several witnesses including the priests who were alleged to have officiated at the marriage and taken part in the usual ceremonies attending such marriages. That evidence has been disbelieved by both the lower courts. The matter being concluded by a finding of fact, it is not possible for the plaintiff to set up an entirely new case like this at this stage. In the second place the contention is, even on its merits, altogether without substance. As remarked by Mr. Mayne at the very page containing the passage relied upon on behalf of the plaintiff-appellant even in

ancient days the *Gandharva* like the *Rakshasa* form was considered lawful only for the warrior tribe.

Further, as observed by the learned author at page 97, "of these various forms of marriage all but two, the *Brahma* and the *Asura*, are now obsolete." Again at page 100 the learned author referring to the *Gandharva* form of marriage remarks as follows :—

> "It seems to me, however, that this form belongs to a time when the notion of marriage involved no idea of permanence or exclusiveness. Its definition implies nothing more than fornication. It is difficult to see how such a connection could be treated at present as constituting a marriage, with the incidents and results of such a union."

We must, therefore, hold that there could be no valid marriage in the *Gandharva* form between Kailasha and Har Charan. Lastly section 6 of the Hindu Widows Remarriage Act (XV of 1856) provides that "whatever words spoken, ceremonies performed or engagements made on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed or made on the marriage of a Hindu widow." It is perfectly clear that when Musammat Kailasha was first married, the performance of the religious rites and ceremonies prescribed for a marriage in the *Brahma* form would have been necessary to constitute her marriage valid. It follows that in the case of her remarriage the same ceremonies and religious rites should have been observed. As both the courts below have found that the evidence led by the plaintiff to establish the observance of the aforesaid rites and ceremonies, is

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unworthy of credit, and the plaintiff has failed to prove remarriage in accordance with that form, the plaintiff's case based on the alleged remarriage must fail.

The result is that the appeal fails and is dismissed with costs.

Srivastava and Pullan, JJ.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice A. G. P. Pullan.

1930 *April*, 15.

CHATURGUN (DEFENDANT-APPELLANT) v. SHAHZADEY (PLAINTIFF-RESPONDENT).*

Indian Limitation Act (IX of 1908) articles, 49, 115, 120 and 145—Lending of ornaments by plaintiff to defendant for use in Ram Lila procession—Ornaments stolen through defendant's negligence from his keeping—Suit for recovery of value of ornaments—Article 120, Limitation Act, when to be applied—Limitation Act, article 115, starting point of limitation under—Bailment—Contract Act (IX of 1872), sections 46, 148 and 160.

Where the plaintiff handed over to the defendant certain ornaments for use in a Ram Lila procession to be celebrated on a particular day and they were stolen from the defendant's keeping owing to his negligence and a suit was brought by the plaintiff for recovery of money representing the value of the ornaments *held*, that article 145 has no application there being no question of trust or *quasi*-trust, nor did article 49 apply as the property was not wrongfully taken or injured or detained by the defendant but was stolen, but the case was governed by the residuary article 115.

Per Srivastava, J.: When the defendant borrowed the ornaments for the Ram Lila procession he must be deemed to have made an implied contract for the return of the goods to the plaintiff and therefore there was a breach of the contract,

*Second Civil Appeal No. 356 of 1929, against the decree of Babu Sitla Sahai, Additional Subordinate Judge of Unao, dated the 1st of September, 1929, modifying the decree of Babu Gulab Chand Srimal, Munsif, Purwa, at Unao, dated the 11th of August, 1928.