

1924  
 MAUNG MUN  
 v.  
 LABYA NAW.  
 YOUNG,  
 OFFG. C.J.

as a lesser wife under the orders of Ma Tin, an indignity which the petitioner says she could not bear, and so preferred to leave the house. "The Court will take into consideration the husband's general conduct towards the wife and if this be of a character tending to degrade her, and subjecting her to a course of annoyance and indignity injurious to her health will feel itself at liberty to hold the cruelty proved." (*Swatman v. Swatman*, 4 S. & T., 135.)

I would confirm the decree.

MAY OUNG, J.—I concur.

CARR, J.—I concur.

## APPELLATE CIVIL.

*Before Mr. Justice Young.*

1923  
 Dec. 17.

RASU

v.

KATTARA.\*

*Sale, whether on credit or for cash—Burden of proof—Revision—Failure to apply the law.*

Where the question at issue is whether the sale of certain goods was on credit or for cash, *held*, that the party alleging that it was a cash transaction must discharge the burden of proof.

Where the lower Court has disregarded some provision of law and failed to apply its mind to that provision, there is ground for revision.

*Zeya v. Mi On Kra San and one*, 2 L.B.R., 333—*followed*.

*P. S. Chari*—for the Appellant.

*Hay*—for the Respondent.

YOUNG, J.—In this revision case the plaintiff pleaded that he had sold certain cattle on credit. The defendant replied that he had bought them for

\* Civil Revision No. 153 of 1923 against the decree of the District Court of Yamèthin in Civil Appeal No. 33 of 1923.

cash. The learned Judges in the Courts below placed the onus on the plaintiff to prove that he had sold them for credit. The plaintiff contended that the onus was wrongly placed. In this, I think, he was correct. The plaintiff pleaded the sale and no payment. The defendant replied pleading payment. The onus therefore was on him.

The next question is to consider whether I can take cognizance of this fact in revision.

The learned Judge certainly applied his mind to the question but came to a wrong decision. He considered the case fell under section 102 of the Evidence Act. It is contended that section 103 is the more specific section, more particularly applicable, and that this provision of law would have been of valuable assistance if he had applied his mind to it.

In 2 L.B.R., pages 333 and 340, it was held that where a Court has applied its mind to the law and decides wrongly, then there is no ground for revision; but, where it disregards some provision of law and has not applied its mind to that provision, then there is ground for revision. In my opinion, the learned Judge failed to apply his mind to section 103, and I think there is ground for revision. The decree must be set aside and the case must be remanded for a new trial. Costs two gold mohurs.

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