

APPELLATE CIVIL.

Before Mr. Justice Mosely.

MAUNG LAW PHYU

v.

MA BAW AND OTHERS.*

1933

Jan. 12.

Burmese Customary Law—Bridal gifts—Return of gifts on breach of promise—Double value—Manegye, Vol. 6, para. 17—Obsolete rule—Contract Act (IX of 1872), s. 74.

Gifts which are given by the bridegroom at the time of the betrothal of a girl to the girl's parents on her behalf according to Burmese Buddhist custom must be returned by the parents if the betrothal is broken off. The provision in the *Dhammathats* that the parents are responsible for double the value is archaic and obsolete.

Even if the parents promise to return double the value the Court should apply s. 74 of the Contract Act, and allow only reasonable compensation and not the penalty.

P. K. Bose for the appellant.

A. N. Basu for the respondents.

MOSELY, J.—This application in revision should have been filed and treated as an appeal. The suit was one for the return of bridal gifts made to woman and her parents, where the promise of marriage had been broken, and the lower appellate Court varied the decree of the trial Court. Such a suit is exempted from the cognizance of a Small Cause Court, *vide* s. 35 (g) of the Second Schedule of the Provincial Small Cause Courts Act. See the case of *Nga La v. Nga Than* (1). The gifts were also an incident of the marriage, and a question of Buddhist law is involved in this case, *vide* *Maung Gale v. Ma Hla Yin* (2).

* Civil Second Appeal No. 4 of 1933 (at Mandalay) from the judgment of the District Court of Shwebo in Civil Appeal No. 26 of 1932.

(1) 5 B.L.T. 57.

(2) (1921) 11 L.B.R. 99.

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MOSELY, J.

The respondent has filed a cross-objection, and as this is to be treated as an appeal, the cross-objection will be considered.

It was found by both the lower Courts that the plaintiff-appellant had given certain gifts at the time of the betrothal to the girl's parents on behalf of the girl as is customary, and he claims double their value as compensation for the breach of promise. The trial Court gave a decree as claimed. The lower appellate Court held that the provisions of the *Dhammathats* were obsolete and no longer followed, and gave a decree for the actual value.

It is contended in appeal that double value should have been given as laid down in *Manugye*, volume 6, paragraph 17, and, I may add, the other *Dhammathats* mentioned in s. 74 of U Gaung's Digest, volume 2, page 70. I would agree, however, with the lower appellate Court that this provision like many others in the *Dhammathats* [as was said by Heald J., in *Ma Hmon v. Maung Tin Kauk* (1), a case which deals with divorce at caprice] is archaic and obsolete, and no longer ought to be followed. In such cases, even if the parent, as here, had promised to return double the value, the Courts should apply s. 74 of the Contract Act, and grant reasonable compensation, and not the penalty stipulated for.

The cross-objection that it was not proved that the gifts were received by the parents has nothing in it. There was evidence that the gifts were offered, as is customary, to the parents (who promised to return them), and, indeed, that is what is contemplated by the *Dhammathats*, which