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out of the subscribed capital representing 1,037 shares. On this ground also the appellant has made out a strong case for winding up.

For the aforesaid reasons I would accept the appeal; and, setting aside the judgment of the Single Judge, restore that of the District Judge, with costs throughout.

SHADI LAL C.J.

BROADWAY J.—I concur.

BROADWAY J.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Shadi Lal C. J. and Hilton J.

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May 16.

MUHAMMAD ALI AKBAR (DEFENDANT) Appellant.

versus

MST. FATIMA BEGAM (PLAINTIFF) Respondent.

Civil Appeal No. 493 of 1925.

Indian Contract Act, IX of 1872, section 23—Ante-nuptial agreement to make the prospective wife a monthly allowance as Kharch-i-pandan *for life—whether enforceable by a Muhammadan wife after leaving her husband without lawful cause—Public policy—proper limits of.*

A Muhammadan wife left her husband's house owing to quarrels with her mother-in-law and then claimed maintenance and an allowance on the basis of an agreement entered into between the parties on the day of their marriage by which the husband promised to pay his wife Rs. 25 per month as *kharch-i-pandan* during his life, in addition to the maintenance to which she was entitled under Muhammadan Law. The District Judge rejected her claim as regards maintenance on the ground that according to Muhammadan Law, the husband is not bound to maintain his wife if she refuses to live with him without lawful cause, but decreed her claim in respect of the *kharch-i-pandan*. The husband alone appealed to the High Court, and contended that the contract as to *kharch-i-pandan* should not be enforced as it

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encouraged separation, and was therefore contrary to public policy.

Held, that there is nothing in the husband's promise to pay a certain sum of money for the personal expenses of his wife, which can reasonably be regarded as opposed to public policy.

Mansur v. *Mst. Azizul* (1), *Muhammad Muin-ud-Din* v. *Jamal Fatima* (2), and *Khwaja Muhammad Khan* v. *Husaini Begam* (3), relied on.

Bai Fatma v. *Alimahomed Aiyeb* (4), dissented from.

Public policy is always an unsafe and treacherous ground for legal decision, and it must therefore be kept within its recognised limits.

Janson v. *Driefontein Consolidated Mines, Ltd.* (5), per Lord Davey, referred to.

Second appeal from the decree of A. L. Gordon Walker, Esquire, District Judge, Lahore, dated the 1st December, 1924, varying that of G. S. Mongia, Esquire, Subordinate Judge, 2nd Class, Lahore, dated the 8th March, 1924, by granting the plaintiff a decree for Kharch-i-pandan.

MUHAMMAD IQBAL and H. C. KUMAR, for Appellant.

BARKAT ALI and MOHSIN SHAH, for Respondent.

HADI LAL C.J.

SHADI LAL, C.J.—The action which has given rise to this second appeal was brought by one *Mussammat* Fatima Begam against her husband, Muhammad Ali Akbar, for the recovery of a certain sum of money on account of maintenance and an allowance called *kharch-i-pandan*. It is common ground that the parties were married on the 27th of July, 1919, and that on that day the husband executed in favour of his wife, not only a deed of dower, but also an agree-

(1) (1928) I.L.R. 3 Luck. 603. (3) (1910) I.L.R. 32 All. 410 (P. C.)
(2) (1921) I.L.R. 43 All. 650. (4) (1913) I.L.R. 37 Bom. 280.
(5) 1902 A. C. 484, 500.

ment, promising to pay her Rs. 25 *per mensem* as *kharch-i-pandan* during his life. It appears that the couple lived together until May, 1921, when, owing to quarrels with her mother-in-law, the wife left her husband's house and went over to live with her parents. There was a reconciliation between the parties in December, 1921, when she came back to her husband. But this reconciliation did not last long, and, in July, 1922, she again left her husband's house, and has since been residing with her parents.

The claim for maintenance has been rejected by the learned District Judge on the ground that, under the Muhammadan Law, which admittedly governs their marital relations, the husband is not bound to maintain his wife if she refuses to live with him without any lawful cause. There can be no doubt that the mere fact that the wife cannot get on with her husband's mother does not constitute a lawful cause which would justify her refusal to return to her husband's dominion. Indeed, the wife has not preferred any appeal against the decree disallowing maintenance, and the only question upon which we are invited to express our opinion is whether the award of Rs. 900 made by the District Judge in favour of the wife on account of the arrears of *kharch-i-pandan* for three years contravenes any rule of law. Now, the instrument upon which the claim was based makes it clear that this allowance was to be made by the husband, in addition to the maintenance to which she was entitled under the Muhammadan Law. It is, however, contended that the obligation cannot be enforced because the contract encourages separation between the spouses, and should therefore be held to be contrary to public policy. In support of his argument the learned counsel for the appellant places his reliance upon the

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judgment of the Bombay High Court in *Bai Fatma* v. *Alimahomed Aiyeb* (1), which, no doubt, lays down the rule that an agreement made between a Muhammadan husband and his wife providing for certain maintenance to be given to the latter in the event of a future separation between them is void as being opposed to public policy. With all due deference to the learned Judges who decided that case, I do not see why a stipulation by the husband to make an allowance to his wife in case of separation should be deemed to offend against the rule of public policy. Such a stipulation encourages their living separate from each other no more than their living together by imposing an obligation on the husband calculated to prevent him from doing any act which would lead to separation. It is to be observed that the judgment has been expressly dissented from by a Division Bench of the Chief Court of Oudh in *Mansur* v. *Mussammat Azizul* (2). The Allahabad High Court also has held in *Muhammad Muin-ud-Din* v. *Jamal Fatima* (3), that an antenuptial agreement entered into between the prospective wife on the one side, and the prospective husband on the other, with the object of securing the wife against ill-treatment, and of ensuring her a suitable amount of maintenance in case such treatment was meted out to her, was not opposed to public policy.

It is, however, unnecessary to dwell upon the subject any further because there can be little doubt that the stipulation with which we are dealing in this case does not in any way contemplate separation between the spouses. It provides for an allowance which resembles in many respects the pin-money of English Law; and the husband has to make the monthly

(1) (1913) I. L. R. 37 Bom. 280. (2) 1928) I. L. R. 3 Luck. 603.
(3) (1921) I. L. R. 43 All. 650.

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payment even when the wife is living with him. It is true that the doctrine of public policy which is recognised in India by section 23 of the Indian Contract Act covers a wide range of subjects; but, as pointed out by Lord Davey in *Janson* v. *Driefontein Consolidated Mines, Limited* (1), " public policy is always an unsafe and treacherous ground for legal decision." It must, therefore, be kept within its recognised bounds. There is nothing in the husband's promise to pay a certain sum of money for the personal expenses of his wife which can reasonably be regarded as opposed to public policy. Such a stipulation is often found in marriage contracts made in Northern India, and its validity has been expressly recognised by their Lordships of the Privy Council in *Khwaja Muhammad Khan* v. *Hussaini Begam* (2).

I must, therefore, hold that there is no valid reason for not enforcing the obligation which the defendant expressly undertook at the time of his marriage with the plaintiff. Nor do I think that he can defeat the claim by raising the plea that the liability under the marriage contract merged in a promissory note executed by him subsequently, and that the promissory note should have been made the basis of the suit. It is sufficient to say in this connection that no such ground of defence was raised in the trial Court, and no evidence was produced to show that there was any such merger as extinguished the liability on the original contract.

I would accordingly affirm the decree of the District Judge, and dismiss the appeal with costs.

HILTON J.—I agree.

HILTON J.

A. N. C.

Appeal dismissed.

(1) 1902 A. C. 484, 500. (2) (1910) I. L. R. 32 All. 410 (P. C.)