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but that he had not executed the decree as he was already in possession of the land and that the decree consequently remained unsatisfied.

SARGENT, C. J.:—There is nothing in the report of the Mámlatdár on the defendant's possession to show that the land was declared to be forfeited by the Collector, as contemplated by sections 56, 57 and 153 of the Land Revenue Code. All that can be gathered from it is that the defendant prevented proceedings under section 56 by himself paying the arrears of assessment. This could not make the defendant's possession adverse or affect the original relationship of mortgagor and mortgagee between the plaintiffs and himself, which remained still in existence after the decree of 11th December, 1876, subject only to the mortgagee's right under the decree to sell within three years from the date thereof.

The defendant not having exercised his power of sale, the plaintiffs are now entitled to redeem; but the sum found due for principal and interest by the decree at its date must be taken as *res judicata* between the parties.

Order accordingly.

PARSI MATRIMONIAL COURT.

Before Mr. Justice Birdwood.

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August 25.

DORA'BJI RUSTOMJI MA'DON, PLAINTIFF, v. JERBA'I, DEFENDANT.*

Pársi Marriage Act, XV of 1865, *Sections* 3, 41, 53, 26, 30—*Jurisdiction—British India—Suit by the husband for divorce—Valid marriage out of British India—Marriage when husband is a minor—Previous consent of guardian.*

The plaintiff and defendant were Párs is. The husband filed this suit in April, 1891, stating that in March, 1885, he and the defendant went through the ceremony of *Ashirvád* at Akola in the Berár Assigned Districts. He alleged that he was at the time only nineteen years of age and that his mother and guardian had not given her previous consent to the ceremony nor was she present at it. He and the defendant, subsequently, cohabited at Bhusáwal until the 8th April, 1885, but since then he had not lived with the defendant. He further alleged that the defendant had been guilty of adultery, and he prayed that, if necessary, it might be declared that the Ashirvád ceremony did not constitute a valid marriage, but that if the marriage should be declared valid, it might be dissolved.

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At the hearing, it was found that the requirements of section 3 of the Pársi Marriage and Divorce Act, XV of 1865, were complied with at the marriage so that the marriage would have been valid, if it had been celebrated within British India. It was also found that the defendant had been guilty of adultery.

Held that the jurisdiction of the Court was not barred merely by the circumstance that the parties were married at Akola. Section 30 of the Act, XV of 1865, applies to marriages wherever celebrated. In the present case, both the parties were domiciled within the territorial jurisdiction of the Court at the time of the marriage, and were still so domiciled, and the adultery was also committed within the jurisdiction. The Court therefore had jurisdiction.

The delegates having found that at the marriage the requirements of section 3 of the Pársi Marriage Act, XV of 1865, were complied with,

Held, assuming that there was no special law or usage in the Berárs on the subject as to the requisites of a valid marriage between Pársis in that district, or that, if there was such law or usage, it was in accordance with section 3 of the Act, the marriage between the plaintiff and the defendant was valid and capable of being dissolved.

SUIT by a husband for divorce on the ground of his wife's adultery.

The plaintiff stated that in the month of March, 1885, when he was of the age of nineteen years, he and the defendant went through the ceremony of *A'shirvád*[1] at Akolá in the Berár Assigned Districts; that his mother and guardian had not given her previous consent to the said ceremony, nor was she present at it. He submitted whether under such circumstances there was a valid marriage.

The plaintiff further stated that after the said ceremony he cohabited with the defendant at Bhusával until the 8th April, 1885, but that since that date he had never lived with the defendant. He alleged that on the 22nd April, 1886, the defendant gave birth to a daughter at Bhusával, which was the offspring of adulterous intercourse with some person unknown to him. He prayed that, if necessary, but not otherwise, it might be declared that the said *A'shirvád* ceremony did not constitute a valid marriage in law between the plaintiff and defendant; that in case the said marriage in fact be declared valid, the same might be dissolved.

The defendant pleaded that the marriage was in all respects valid and that the child born in April, 1886, was the plaintiff's child.

(1) See section 3, Act XV of 1865.

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At the hearing it was found that the requirements of section 3 of Act XV of 1865 had been complied with when the parties were married, and that since the marriage the defendant had been guilty of adultery. The suit was filed in April, 1891. Both the plaintiff and defendant were then living in Bombay.

The question of the Court's jurisdiction was raised on behalf of the respondent.

F. R. Vicáji for the plaintiff.

The defendant did not appear.

The following authorities were referred to:—*Niboyet* v. *Niboyet* (1); *Yelverton* v. *Yelverton* (2); Párs Marriage Act XV of 1865, sections 2, 3, 19, 26, 40, 53 (*a*); Story's Conflict of Laws, sections 229 and 230A.

BIRDWOOD, J.:—In this case the plaintiff sues that his marriage may be dissolved and a divorce granted on the ground of his wife's adultery. The Delegates have found that the requirements of section 3 of the Párs Marriage and Divorce Act of 1865 were complied with when the parties were married, so that the marriage would be a valid marriage under the Act if it had been celebrated in British India. Six of the Delegates have also found that, since the celebration of the marriage, the defendant has been guilty of the alleged adultery; and this being the decision of the majority of the Delegates, is conclusive under section 41 of the Act. It has also been found that the offence has not been condoned, that the parties are not colluding together, and that the plaintiff has not connived at or been accessory to the offence. Eight of the Delegates also hold that there has been no unnecessary or improper delay in bringing the suit.

It appears from the evidence that the parties were married at Akola in the Berárs. As the Berárs are not vested in Her Majesty by the Statute 21 and 22 Vic., cap. 106, they are not included in "British India," as defined in the Párs Marriage and Divorce Act; and the question arises, with reference to section 53 of that Act, which declares that it "shall extend to the whole of British India," whether this Court has jurisdiction to dissolve the marriage of the parties. I am of opinion that

(1) L. R., 4 P. D., 1. (2) L. R., 1 S. and T., 574.

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the jurisdiction of the Court is not barred merely by the circumstance that the parties were married at Akola. The Act is certainly not in force at Akola; but section 26 of the Act permits a Pársi husband or wife to bring a suit in the Court established under the Act within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit. Section 30 provides for suits for the dissolution of a marriage; and the word "marriage" is defined in section 2 as meaning "a marriage between Pársis whether contracted before or after the commencement" of the Act. The provisions of section 30 do not, therefore, apply only to marriages celebrated in accordance with the requirements of section 3. That section applies to marriages whensoever celebrated. It applies also, in my opinion, to valid marriages wheresoever celebrated. If it had been the intention of the Legislature to give relief to Parsi husbands and wives, in proper cases, only if they had been married in British India, that intention would have been clearly expressed. In the Indian Divorce Act IV of 1869 the Courts established thereunder have their jurisdiction in respect of marriages expressly limited. Those Courts can make no decree of dissolution of marriage unless the marriage has been solemnised in India, or unless the matrimonial offence complained of has been committed in India, or unless the husband has, since the solemnization of the marriage, exchanged his profession of Christianity for the profession of some other form of religion. No such limitation of the jurisdiction of this Court is to be found in Act XV of 1865. As, in the present case, both the parties were domiciled within the territorial jurisdiction of this Court at the time of the marriage, and are still so domiciled, and as the adultery of which the defendant has been found guilty was also committed within the jurisdiction, I have no doubt that the Court has jurisdiction (cf. *Niboyet* v. *Niboyet*[1]).

The question remains whether the marriage of the parties is valid. The plaintiff asks in his plaint, as an alternative prayer, that his marriage be declared invalid on the ground that it was celebrated without the previous consent of his mother, he having been a minor at the time of its celebration;

(1) 3 P. D. 52; and L. 4, *ib.* 1.

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but, during the hearing, this claim was properly abandoned, for the Court has no jurisdiction under the Act to make such a declaration. It must, however, consider the question of the validity of the marriage incidentally to the question whether a decree can be made for its dissolution, for if the marriage was not valid, it was no marriage at all and cannot be dissolved. The question must be considered with reference to the *lex loci contractús* (see Story's Commentaries on the *Conflict of Laws*, ch. 5). No evidence has been adduced to show what law or rule or usage is observed by Pársis in respect of marriages in places in India where Act XV of 1865 is not in force. From information, for which I am indebted to the Judicial Commissioner in the Berárs, it would appear that there is no express rule or law in force in that territory similar to section 3 of the Act. The Delegates believe, however, that the requirements of section 3 are generally complied with now by Pársis everywhere in India. If there is no law in the Berárs on the subject, the question of the validity of the marriage of the parties might properly be determined with reference to the law of their domicile (see Story, section 118). I think I may safely assume that either there is no established rule or usage, or else that, if there is any rule or usage as to the requisites of a valid marriage between Pársis in the Berárs, it is in accordance with the provisions of section 3 of the Act, or at all events is not more stringent in its requirements. As the Delegates have found that the requirements of section 3 were complied with when the parties were married, I must hold that the marriage was a valid marriage, capable of being dissolved.

In accordance with the decision of the Delegates on the merits of the case, I make a decree *nisi* for the dissolution of the marriage of the parties and for their divorce if no cause be shown to the contrary within three months from this date. The plaintiff to pay the costs of this suit.

Attorneys for plaintiff.—Messrs. *Pestanji and Rustim.*