ORIGINAL CIVIL.

Before Mr. Justice Russell.

SONALUXMI (PLAINTIFF) *v.* VISHNUPRASAD HARIPRASAD (DEFENDANT).*

1903. *December* 14.

Brahmo-Samaj—Marriage—Polygamy—Act III of 1872, section 19.

A marriage performed in accordance with the rites of the Brahmo-Samaj is invalidated by the fact that either of the parties thereto has a husband or wife by a previous marriage alive.

THE main question to be decided in this suit was whether the defendant Vishnuprasad Hariprasad had lawfully married the plaintiff Sonaluxmi according to the rites of the Brahmo-Samaj faith, his wife Krishna by a previous marriage being alive.

Davar, Lowndes and *Bahadurji* appeared for the plaintiff.

Scott (Advocate General) and *Raikes* appeared for the defendant.

RUSSELL, J.:—It appears that the defendant is a member of a wealthy and, I believe, highly respectable family in Bhávnagar: and some years ago in 1894 he being a Wadnagara Nagar Bráhmin made the acquaintance of the plaintiff Sonaluxmi, wife of one Dulab Ranchore, a Soni by caste. Sonaluxmi must have been a person of considerable personal attractions, and the defendant apparently made her acquaintance in the usual way through the intermediation of some servant, and in Bhávnagar illicit intercourse took place between the parties and lasted for a considerable time. It appears from the letters put in that the defendant, although a drunkard and a disreputable person, is a man of extremely religious opinions. Constant references are made in his letters to the intervention of God and Goddesses, and all his life is apparently directed by their guidance. Undoubtedly, the plaintiff and the defendant visited various places of pilgrimage when she was travelling with him.

There can be no doubt upon the evidence in the case that the *factum* of the defendant's going through a ceremony of marriage with the plaintiff is clearly proved. It is stated to have taken

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place in the house of one Mr. Nagarkar. He is a member of a sect known as the "Brahmo-Samaj," and is an undergraduate of the Bombay University, a journalist, and a preacher of the Brahmo Samaj. He says that one Vanmali, a member of the Brahmo-Samaj, brought the plaintiff and the defendant to his house at Girgaon. Mr. Nagarkar says that he had two interviews with the parties, and that he asked them as to their faith: and that they answered that they were "theists," that is, believers in one God: and that they wanted to get married. At the second interview Mr. Nagarkar married them according to the Brahmo-Samaj rites. Mr. Nagarkar has produced a little book called "*The New Samhita*," containing the tenets of his sect. Mr. Nagarkar says in his evidence as follows:—

"I was not told that they were living together, nor was I told that the defendant had a wife living; had I known these facts I certainly would have refused to marry them."

I find in the Government of India Gazette of the 27th January, 1872, Mr. (afterwards Sir) Fitz-James Stephens, in moving that the report of the Select Committee on the bill to legalize marriages between certain Natives of India not professing the Christian religion be taken into consideration, gave an interesting account of the sect known as the Brahmo-Samajists. He says: "As your Lordship and the Council are aware there exists a religious body called the Brahmo-Samaj . . . . . As regards marriage the difference between the two parties (Adi-Brahmos and Progressive Brahmos) appears to be this:—The marriage ceremonies adopted by the Progressive Brahmos depart more widely from the Hindu Law than those which are in use amongst the Adi-Brahmos. The Adi-Brahmos indeed contend that by Hindu Law their ceremonies though irregular would be valid. The Progressive Brahmos admit that by Hindu Law their marriages would be void. Moreover, the Progressive Brahmos are opposed both to infant marriage and to polygamy far more decisively than the conservative party . . . . . ."

Having regard to what is said in the above short history of this sect there can be no doubt that Mr. Nagarkar belonged to the sect called "Progressive Brahmos." There can be no question that the tenets of the Progressive Brahmos are in favour of

monogamy for the purpose of marriage. This is clear from the little book called "*The New Samhita*" referred to above which is put in in this case as containing the tenets of the Progressive Brahmos. I have read through the whole of the book. A great number of the tenets contained in it closely resemble the tenets of the present Christianity, although some of the tenets may sound somewhat old-fashioned, specially those with reference to masculine duties not being performed by women. But with regard to the ceremony of marriage the essentials necessary for a valid marriage according to the tenets of this sect are that "No man shall have more than one wife, and no woman shall have more than one husband:" and further, polygamy and polyandry are interdicted and strict monogamy is enjoined. It also appears from page 67 that this sect holds marriage to be more than a civil contract: it holds it to be a sacred and indissoluble tie.

We have now to see whether the plaintiff and the defendant were parties capable of going through the ceremony of marriage according to the tenets of the Brahmo-Samaj as represented by Mr. Nagarkar.

The defendant, after his illicit intercourse with the plaintiff had begun, travelled to various places with her: and her husband Dulab Ranchore gave her a release (or divorced her) in consideration of Rs. 1,100 paid by the defendant to him. Now it also appears that the defendant had at this time a lawfully married wife named Krishna living at the time he went through the ceremony of marriage with the plaintiff according to the rites of the Brahmo-Samaj church at Girgaon. The plaintiff was fully aware of her existence. It is not necessary for me to go into the question whether this marriage is valid or invalid according to the Hindu Law. The defendant is in a dilemma. He was married either according to the Hindu Law or Progressive Brahmo-Samaj. No suggestion is made that any Hindu ceremonies were performed. I hold that it was a marriage performed according to the rites of the Progressive Brahmo-Samaj sect. The defendant therefore being a married man was incapable of going through this ceremony, as, according to the form of ceremony and doctrine adopted by that sect, it was essential that the defendant ought

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to have been a single man. It is, therefore, impossible for me to hold that this is a valid marriage according to law. I have carefully looked up a large number of reported cases to see if I could come across any marriages performed under similar circumstances where the form of marriage comes into consideration. The only case I have come across is that of *Lindo* v. *Belisario*.[1] That was a Jewish marriage, and it was held to be invalid because the forms of the Jewish religion were not carried out.

It is not necessary for me to decide the question which was raised whether a Bráhmin can marry a woman of low caste. I may say, however, that, having regard to the provisions of Act III of 1872, it does not at all seem settled that a Bráhmin cannot validly marry a person of another caste, although that caste is lower than his own.

Act III of 1872 deals with marriages between persons who do not profess the Christian, Jewish, Hindu, Mahomedan, Pársi, Buddhist, Sikh or Jain religion: and section 19 of that Act runs as follows:—"Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions: nor shall this Act be deemed, directly or indirectly, to affect the validity of any mode of contracting marriage; but if the validity of any such mode shall hereafter come into question, before any Court, such question shall be decided as if this Act had not been passed."

Further on in his speech referred to above Sir Fitz-James Stephens says that in cases of marriage where the parties are neither Christians, Jews, Hindus, Mahomedans, Pársis, Buddhists, Sikhs or Jains, the law of justice, equity and good conscience is to be observed. I mention this matter because I do not wish to be taken as deciding that under the present state of the law valid marriages may not be performed between Bráhmins and members of lower castes, and, I think, it is probable that the Courts will hold such marriages valid and binding if validly performed.

Now, looking at the case before me, I find on the evidence that as a matter of fact the defendant in this instance intended to make the plaintiff his wife. First of all he went through a

(1) (1795) 1 Hag. Con. 216.

marriage ceremony with her; secondly, wrote a number of letters showing that he was treating her as his wife; thirdly, she acquired the reputation of being his wife. Lastly, he performed a pilgrimage to Násik with her: while at Násik he went with her through a ceremony called "*potia-snan.*" In this ceremony he bathed in the river with her having her *sári* wrapped around them both, and similarly he went through the ceremony again bathing in the river a second time with his *dhotar* wrapped around them both. This ceremony is gone through only by persons who are husband and wife. Therefore I find that the defendant did go through the marriage at the Brahmo-Samaj church intending to make the plaintiff his wife. But I hold that as defendant had at that time a wife married according to the Hindu Law alive, the marriage ceremony performed by Mr. Nagarkar between the defendant and plaintiff being contrary to the tenets of the Brahmo-Samaj is invalid according to law.

Attorneys for the plaintiff.—*Messrs. Tyabjee & Co.*

Attorneys for the defendants.—*Messrs. Mirza & Mirza.*

FULL BENCH.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Chandavarkar, Mr. Justice Batty and Mr. Justice Aston.

TUKARAM JAYARAM (ORIGINAL PLAINTIFF), APPELLANT, *v.* HARI VALAD SAKHARAM AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1904.
April 3.

Mámlatdárs' Courts Act (Bom. Act III of 1876), sections 4, 15, 18 and 21(1)*—Limitation Act (XV of 1877), Schedule II, Article 47—Possessory Suit in Mámlatdárs' Court—Rejection of plaint—Subsequent suit for possession on title in ordinary Court—Limitation.*

A plaintiff suing in the ordinary Courts on his title for the possession of land is not bound by reason of anything in Article 47, Schedule II, of the Limitation

* Second Appeal No. 90 of 1903.

(1) Sections 4, 15, 18 and 21 of the Mámlatdárs' Courts Act (Bom. Act III of 1876).

4. Every Mámlatdár shall preside over a Court, which shall be called a Mámlatdár's Court, and which shall have power within such territorial limits as may from time to