

## ORIGINAL CIVIL.

*Before Mr. Justice Tyabji.*1905,  
*March 18.*ZULEKABAI, WIDOW (PLAINTIFF), v. AYESHABAI, WIDOW AND  
ANOTHER (DEFENDANTS)\**Practice—Chamber proceedings—Certifying Counsel.*

In certifying Counsel in chamber matters the Court ought to have regard to the following circumstances :—

(1) Whether notice has been given by either side of the intention to employ counsel.

(2) Whether the matter to be dealt with involves the consideration of complicated facts or merely of simple facts.

(3) Whether there arises any substantial question of law which has to be argued and discussed.

*PER CURIAM* :—The rule as to certifying Counsel has been interpreted as meaning that Counsel should be certified unless it is not a fit case for Counsel.

PROCEEDINGS in chambers.

This was a notice issued under section 245B of the Civil Procedure Code (Act XIV of 1882), calling upon Puran bin Hussanbhai to show cause why he should not be committed to jail in execution of a decree. The decree directed him to pay Rs. 50 every month as maintenance to Zulekabai (plaintiff No. 1) and her minor daughters.

*Raike*, for the plaintiff.

*D. D. Davar*, for the defendant No. 2.

TYABJI, J. :—I think the notice must be made absolute with costs.

As to certifying Counsel it is important to maintain a continuity and uniformity of practice.

I think I should have regard to the following considerations :—

(1) Whether notice has been given by either side of the intention to employ Counsel.

(2) Whether the matter to be dealt with involves the consideration of complicated facts or merely of simple facts.

(3) Whether there arises any substantial question of law which has to be argued and discussed.

I am desirous of acting on principles which are capable of being stated clearly and succinctly.

\* O. C. J. Suit No. 37 of 1904.

The rule as to certifying Counsel has been interpreted as meaning that Counsel should be certified unless it is not a fit case for Counsel. I should myself have felt inclined to put a stricter interpretation on the rule, but the practice has been the other way; and I do not think I should be justified in disregarding the practice followed by my predecessors.

It seems to me that if either party gives notice of his intention to employ Counsel, that party at any rate acknowledges, that, in his opinion, the matter is fit for employment of Counsel. Again, if the question involves the discussion of complicated facts, or of any substantial question of law, I think Counsel should be certified.

In this case

(a) Notice has been given by the plaintiff that he will employ Counsel.

(b) A question has been raised as to whether the defendant should be compelled to pay under the circumstances stated in the affidavit.

I cannot say that the employment was improper: or that there was no substantial question of law and fact to discuss.

Therefore I will certify Counsel.

*Counsel certified.*

Attorneys for the plaintiff:—*Messrs. Mulla and Mulla.*

Attorney for the defendants:—*Mr. M. B. Chothia.*

R. R.

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## ORIGINAL CIVIL.

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*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and  
Mr. Justice Butcher.*

MOOSA HAJI JOONAS NOORANI AND OTHERS (DEFENDANTS), APPELLANTS,  
v. HAJI ABDUL RAHIM HAJI HAMED (PLAINTIFF), RESPONDENT.\*

1905,  
April 10.

*Cutchi Memons—Succession—Marriage in approved form—Hindu Law.*

In the absence of proof of any special custom of succession, the Hindu Law of inheritance applies to Cutchi Memons.

The legal consequences of the classes of marriage, the approved and disapproved, in relation to inheritance, vary according as their leading characteristics are blameworthy or not, and suggest the inference that it is the quality

\* Appeal No. 1315, Suit 412 of 1902.