

were fresh in her memory would be admissble as corroborative evidence.

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Mr. *Graham* for the petitioner.—The cases cited by Mr. Hyde show no authority for granting this application.

Mr. *Hyde* in reply.—The rule is clearly laid down in *Brown on Divorce*, 221. In consequence of the difference in the Law of Evidence the production of the letters is of much more importance here than it would be in England.

PHEAR, J.—I think the respondent is entitled either to have the letters brought into Court or that the petitioner should file an affidavit to the effect that he has none in his possession. Should any letters be brought into Court, the Court will look into them and decide which of them the respondent is entitled to inspect as being material to the case.

Before Mr. Justice Phear.

CRUMP v. CRUMP.

Application for Alimony.

1860
Aug. 26.

In an application for alimony, it is sufficient to set out the fact of the marriage in the petition ; an affidavit to that effect is unnecessary.

In making the application, it is sufficient to show the Court that there has been a ceremony which might be a valid marriage ; and therefore where the petitioner was shown to be the respondent's deceased wife's sister, alimony was granted.

THIS was a suit by the wife for a divorce. The petitioner prayed for one-fifth of the income of the respondent's whole property, which from the affidavit appeared to be as follows : *viz.*, rupees 583, per month, income from the business ; present share in stock 19,000 ; private practice 14 per month for the last 3 years. The respondent drew 200 rupees a month as actual income.

Mr. *Hyde* moved on petition that the respondent be ordered to grant alimony, *pendente lite*, to the petitioner, his wife.

Mr. *Branson* for the respondent opposed the application, and submitted that the practice in England, in an application of

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this kind, was that there should be an affidavit setting out the marriage, and contended that this practice should be carried out here.

PHEAR, J.—The fact of the marriage is set out in the petition.

Mr. *Branson* further contended that the petitioner was the sister of the respondent's deceased wife, and that consequently, there being no legal marriage, the Court ought not to grant alimony; but in the event of its being considered by the Court that alimony should be granted, it ought, under no circumstances, to exceed one-fifth of the respondent's net income.

Mr. *Hyde* in reply contended that not only ought the alimony to be granted, but also maintenance, as the respondent had left one of his children with his wife to be supported by her at her own expense; that the Court could not on the present application enter into any question as to the legality of the marriage; whether the marriage was legal or no, the right to alimony would equally stand good. If a *de facto* marriage was established or admitted, the wife was entitled to alimony, and her *de facto* marriage was admitted by the respondent in his answer: *Miles v. Chilton* (1). Moreover a marriage with a deceased wife's sister, though void in England, is not void in this country, but only voidable: *Das Merces v. Cones* (2). The commissioner, moreover, could not now decide the question of the validity of the marriage, and probably could not do so in this suit; all that was necessary at present to entitle the petitioner to alimony was to satisfy the Court that there had been a *de facto* marriage.

PHEAR, J.—I think all that it is necessary for me to be satisfied of, is that there has been a ceremony which might be a valid marriage.

Mr. *Hyde* further submitted that in the assessment of the amount of alimony the respondent's whole property ought to be

(1) 1 Robt. Ecc. Rep., 684.

(2) 2 Hyde, 65.

taken into account—*Crampton v. Crampton and Armstrong*(1)—and not merely the income of rupees 200 per month, which he actually drew for his expenses.

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Mr. *Branson* said that the partnership shewed that Mr. Crump was precluded from drawing more than rupees 200 a month.

PHEAR, J.—I have looked into the affidavits and the partnership deed. I think alimony must be granted, and I fix the amount at rupees 60 per mensem.

Before Sir Burnes Peacock, Kt., Chief, Justice, and Mr. Justice Norman.

ROBERTSON GLADSTONE AND OTHERS v. KASTURY MALL.

1869
June 7.

Non-performance of Contract—“Ex a certain Ship.”

By a contract entered into between the plaintiffs and defendant, the plaintiffs agreed to sell certain goods *ex a specific ship* to the defendant, the goods to be taken delivery of within 45 days, and 10 days to be allowed for inspection, and claiming allowance for any damaged-goods; the defendant to take the risk of damage from the date of the contract. The period for taking delivery and for inspection dated from the 13th of May. The plaintiffs did not receive the whole of the goods until the 10th of June, and therefore were not ready to perform their contract by submitting them for inspection within the specified time; the defendant did not call upon them to do so. In a suit for breach of the contract by the plaintiffs in not accepting the goods, *held*, that the plaintiffs not being in a position to complete the contract, no cause of action had arisen.

Held on appeal, the goods ought to have been ready for inspection within the 10 days stipulated, and the plaintiffs not having shown that they were ready and willing so to perform the contract, had no right of action, notwithstanding that the defendant never, in fact, called on them to deliver the goods for inspection.

The words “*ex a certain ship*” must be taken to mean that the goods are really landed, and not in course of being landed, and therefore, independently of the question of the necessity on the part of the plaintiffs to show their readiness to perform their part of the contract, the defendant was not bound to take goods on boardship, in respect of which if the contract were binding upon him, he would have been bound to take the risk of any damage or loss to the goods on boardship, or in the course of landing.

THE plaintiffs, the members of the firm of Gladstone, Wyllie, and Co., brought this suit to recover damages for the breach, by the defendant, of a contract to accept certain goods. The plain-

(1) 32 L. J. Pro. and Mat., 142.